



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 28] नई दिल्ली, जुलाई 6—जुलाई 12, 2014, शनिवार/आषाढ़ 15—आषाढ़ 21, 1936
No. 28] NEW DELHI, JULY 6—JULY 12, 2014, SATURDAY/ASADHA 15—ASADHA 21, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1934.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन प्रवर्तन निदेशालय के देहरादून क्षेत्रीय कार्यालय को जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा. सं. ई. 11017/1/2012-एडी (हिन्दी-4)]

चन्द्रभान नारनौली, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 3rd July, 2014

S.O. 1934.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the Dehradun Regional office of the Directorate of Enforcement Under the Department of Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F.No. E. 11017/1/2012-AD(HINDI-4)]

CHANDERBHAN NARNAULI, Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 जुलाई, 2014

का.आ. 1935.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा उक्त अधिनियम के उद्देश्य के लिए नीचे दी गई तालिका के कॉलम 2 में उल्लिखित अधिकारियों को संपदा अधिकारी नियुक्त करती है और आगे यह निदेश देती है कि उक्त अधिकारी नीचे दी गई तालिका के कॉलम 3 में यथा निर्दिष्ट क्षेत्रों के अंतर्गत आने वाले सरकारी परिसरों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं में भीतर उक्त अधिनियम द्वारा या इसके तहत संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेंगे तथा सौंपे गए कर्तव्यों का पालन करेंगे।

क्र. सं. पदनाम तथा पता		सरकारी परिसरों की श्रेणी तथा अधिकार की स्थानीय सीमा
1.	2.	3.
1.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, गुवाहाटी रीजन, युनाइटेड बैंक बिल्डिंग, द्वितीय तल, हेम बरूआ रोड, पानबाजार, गुवाहाटी-781001	असम, मणिपुर, मेघालय, अरूणाचल प्रदेश, त्रिपुरा, मिजोरम तथा नागालैण्ड राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
2.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, पटना रीजन, अभय भवन, द्वितीय तल, फ्रेजर रोड, पटना-800001	बिहार राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
3.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, झारखंड रीजन, पी पी कंपाउंड, सलूजा बिल्डिंग, तृतीय तल, मेन रोड, पो. बॉ. सं. 172, रांची-834001	झारखंड राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
4.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, भुवनेश्वर रीजन, ए-88, कल्पना एरिया, भुवनेश्वर-751014, ओडिशा	ओडिशा राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
5.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, रायपुर रीजन, जीत टॉवर, राजकुमार कॉलेज के सामने, जी. ई. रोड, रायपुर, छत्तीसगढ़-492001	छत्तीसगढ़ और मध्य प्रदेश राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
6.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, लखनऊ रीजन, 4-ए, हबीबुल्लाह एस्टेट, हजरतगंज, लखनऊ-226001	उत्तर प्रदेश तथा उत्तराखण्ड राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हो
7.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, छत्तीसगढ़ रीजन, एससीओ/32-33-34, सेक्टर-17सी, चंडीगढ़-160017	पंजाब, हरियाणा, हिमाचल प्रदेश, जम्मू और कश्मीर तथा चण्डीगढ़ राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
8.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, दक्षिणी रीजन, 184/192, श्री दुर्गा टॉवर्स, रामकृष्ण मठ रोड, मंडावेली, चेन्नई-600028, तमिलनाडु	तमिलनाडु, केरल और पांडिचेरी राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
9.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, बंगलौर रीजन, 40, कैम्पेगौड़ा रोड, बंगलौर-560009	कर्नाटक और आंध्र प्रदेश राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
10.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, मुम्बई रीजन, 25, सर फिरोज शाह मेहता रोड, फोर्ट, चतुर्थ तल, मुम्बई-400001	महाराष्ट्र, गुजरात, दादर और नगर हवेली तथा गोवा राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों

1.	2.	3.
11.	मुख्य क्षेत्रीय प्रबंधक, युनाइटेड बैंक ऑफ इंडिया, दिल्ली रीजन, 90/9, ब्लॉक-पी, कर्नाट सर्कस, नई दिल्ली-110001	दिल्ली और राजस्थान राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों
12.	सहायक महाप्रबंधक, परिसर विभाग, युनाइटेड बैंक ऑफ इंडिया, प्रधान कार्यालय, नौवां तल, 11, हेर्मत बसु सरनी, कोलकाता-700001	पश्चिम बंगाल, सिक्किम तथा अंडमान और निकोबार राज्य के सभी जिलों में अवस्थित परिसर जो कि युनाइटेड बैंक ऑफ इंडिया के हों अथवा लीज पर लिए गए हों अथवा उसके आधार पर तथा उसके प्रशासनिक नियंत्रण में हों

[फा. सं. 4/1/2012-बीओए]

एम. एम. दौला, अवर सचिव

(Department of Financial Services)

New Delhi, the 10th July, 2014

S.O. 1935.—In exercise of the powers conferred by section 3 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Officers mentioned in column No. (2) of the Table below to be Estate Officers for the purpose of the said Act and further direct that the said officer shall exercise the powers conferred and the duties imposed on an Estate Officer by or under the said Act within the local limits of his jurisdiction in respect of the public premises falling under area as specified in column No. 3 of the Table below:—

Sl. No.	Designation and Address	Categories of public premises and local limits of jurisdiction.
1.	2.	3.
1.	Chief Regional Manager, United Bank of India Guwahati Region, United Bank Building 2nd floor, Hem Barua Road. Panbazar, Guwahati-781001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Assam, Manipur, Meghalaya, Arunachal Pradesh, Tripura, Mizoram and Nagaland.
2.	Chief Regional Manager, United Bank of India, Patna Region Abhay Bhawan, 2nd Floor, Frazer Road, Patna-800001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Bihar.
3.	Chief Regional Manager, United Bank of India, Jharkhand Region Pee Pee Compound, Saluja Building, 3rd Floor, Main Road. Post Box No.: 172, Rachi-834001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Jharkhand.
4.	Chief Regional Manager, United Bank of India, Bhubaneswar Region A-88, kalpana Area, Bhubaneswar-751014, Odisha	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Chatisgarh & Madhya Pradesh.
5.	Chief Regional Manager, United Bank of India, Raipur Region Jeet Tower, opp Rajkumar College, G. E. Road, Raipur. Chattishgarh-492001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Chatisgarh and Madhya Pradesh.
6.	Chief Regional Manager, United Bank of India, Lucknow Region 4-A Habibullah Estate	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Uttar Pradesh & Uttarakhand.

1.	2.	3.
7.	Chief Regional Manager, United Bank of India, Chandigarh Region SCO/32-33-34, Sector-17C. Chandigarh-160017	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and Chandigarh.
8.	Chief Regional Manager, United Bank of India, Southern Region 184/192 Sree Durga Towers. Ramkirshna Math Raod. Mandaveli, Chennai-600028, Tamil Nadu.	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Tamil Nadu, Kerala & Pondicherry
9.	Chief Regional Manager, United Bank of India, Bangalore Region, 40, Kempegowda Road, Bangalore-560009	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Karnataka & Andhra Pradesh.
10.	Chief Regional Manager, United Bank of India, Mumbai Region 25, Sir Pheroz Shah Mehta Road, Fort, 4th Floor, Mumbai-400001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Maharashtra, Gujarat, Dadra & NH and Goa.
11.	Chief Regional Manager, United Bank of India, New Delhi Region 90/9, Block-P Cannought Circus, New Delhi-110001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of Delhi & Rajasthan.
12.	Assistant General Manager, Premises Department, United Bank of India, Head Office 9th Floor, 11, Hemanta Basu Sarani, Kolkata-700001	Premises belonging to, or taken on lease by or on behalf of & under the administrative control of United Bank of India and situated in all districts of the State of West Bengal, Sikkim and Andaman & Nicobar.

[F. No. 4/1/2012-BOA]

M. M. DAWLA, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1936.—राष्ट्रपति, श्री प्रदीप कुमार, को 13.06.2014 (अपराह्न) से केन्द्रीय सरकार औद्योगिक न्यायाधीकरण-सह- श्रम-न्यायालय, भुवनेश्वर, के पीठासीन अधिकारी के रूप में 02.10.2018 तक अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं. ए. 11016/02/2013-सीएलएस-II]

एस. के. सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 4th July, 2014

S.O. 1936.—The President is pleased to appoint Shri Pradeep Kumar as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar w.e.f. 13.06.2014 (A.N.) for a period up to 02.10.2018 or until further orders, whichever is earlier.

[No. A. 11016/02/2013-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 3 जुलाई 2014

का.आ. 1937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 90/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/06/2014 को प्राप्त हुआ था।

[सं. एल-12011/34/2013-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 04/06/2014.

[No. L-12011/34/2013 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH****Case No. ID 90 of 2013**

Reference No. L-12011/34/2013-IR(B-I) dated 1.08.2013

Shri B.S. Rathi
C/O The President,
SC/ST Employees Welfare Association,
Chandigarh Circle, C/o House No. 3086/2,
Sector-44-D,
Chandigarh. ...Workman

Versus

1. The Deputy General Manager,
State Bank of India,
Zonal Office Haryana,
Sector-5, Panchkula (HR) ...Respondent

Appearances :

For the Workman: None.
For the Management: Sh. S.K. Gupta.

AWARD

Passed On: -4.6.2014

Government of India Ministry of Labour vide notification No.L-12011/34/2013-IR(B-I)dated 1.08.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference :

“Whether the action of the management in awarding punishment in the lower stage of pay by two stages to Shri B.S.Rathi, Assistant is just, fair and legal? If not, what relief to the concerned employee is entitled to and from which date?”

2. Case called repeatedly. None appeared on behalf of the workman despite appearance on behalf of the workman in the past. No claim statement has been filed although the case was received in this Tribunal in August 2013. For Management Sh. S.K. Gupta is present. It appears that the workman is not interested to pursue with the present reference. The same is returned to the Central Govt. for want of prosecution. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.
Chandigarh
04.06.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 3 जुलाई 2014

का.आ. 1938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 86/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2014 को प्राप्त हुआ था ।

[सं. एल-12011/33/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 11/06/2014.

[No. L-12011/33/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH****Case No. ID 86 of 2013**

Reference No. L-12011/33/2013-IR(B-I) dated 22.7.2013

Shri B.S.Rathi
C/O The President,
SC/ST Employees Welfare Association,
Chandigarh Circle, C/o House No. 3086/2,
Sector-44-D,
Chandigarh. ...Workman

Versus

1. The Deputy General Manager,
State Bank of India,
Zonal Office Haryana, Sector-5,
Panchkula (HR). ...Respondent

Appearances :

For the Workman : None
For the Management : Sh. S.K. Gupta.

AWARD

Passed On : 4.6.2014

Government of India Ministry of Labour vide notification No.L-12011/33/2013-IR(B-I)dated 22.7.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference :

“Whether the action of the management in awarding punishment of bringing down in the

scale of pay by one stage for one year without cumulative effect to Shri B.S.Rathi, Assistant is just, fair and legal? To what relief the concerned employee is entitled and from which date?"

2. Case called repeatedly. None appeared on behalf of the workman despite appearance on behalf of the workman in the past. No claim statement has been filed although the case was received in this Tribunal in August 2013. For Management Sh. S.K. Gupta is present. It appears that the workman is not interested to pursue with the present reference. The same is returned to the Central Govt. for want of prosecution. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
04.06.2014

S. P. SINGH, Presiding Officer
नई दिल्ली, 3 जुलाई 2014

का.आ. 1939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 7/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/06/2014 प्राप्त हुआ था 1

[सं. एल-12012/59/2010-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala, and their workmen, received by the Central Government on 03/06/2014.

[No. L-12012/59/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 7/2011

Reference No.L-12012/59/2010-IR(B-I) dated: 8.4.2011

Shri Shashi Bhushan
S/o Shri Labchand Arora
Ward No.2, Near Shivalaya Mandir

Mandi Goluwala, Pilibanga,
District Hanumangarh.

V/s.

1. Branch Manager,
State Bank of Patiala
Goluwala Tehsil, Pilibanga,
Hanumangarh.
2. General Manager,
State Bank of Patiala,
Patiala (Punjab).

Present:

For the Applicant : Ex-party

For the Non-applicants : Sh. R.K.Jain & Sh. Amitava
Mozumdar, Advocates

AWARD

Dated : 29.4.2014

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“ Whether the action of the management of State Bank of Patiala, Hanumangarh in terminating the services of Shri Shashi Bhushan, Sweeper w.e.f. 16.1.2009 is legal & justified? To what relief the workman is entitled?”

2. According to statement of claim the applicant was appointed on 25.12.2007 as daily wage IVth class employee with opposite party Branch Manager, State Bank of Patiala & worked freely & uninterruptedly till 16.1.2009. He was removed from the service by oral order dated 16.1.2009. It has been further alleged that neither any reason was shown for his removal nor notice was given to him & he was also not given advance pay as compensation in lieu of notice, thus, his removal was in violation of section 25-F of Industrial Disputes Act, 1947 whereas he has worked continuously for more than 240 days in a calendar year.

3. It has been further alleged that he was working on a permanent post which is still vacant & after his removal opposite party has appointed a new workman in place of applicant & thus applicant was deprived of opportunity, thus there has been violation of principle of ‘last come first go’ as provided under section 25-G of Industrial Disputes Act, 1947.

4. It has been further alleged that during period of service the applicant worked under the opposite party with utmost honesty, dedication & devotion to duty & never provided any opportunity of complaint & there was no complaint against the applicant. The applicant has also

alleged that for the promotion of the branch with his efforts Five Hundred saving accounts, fifty current accounts, fifty group insurance policies & 20 K.C.C. accounts were opened in the bank beside F.D. of thirty laks were made & three car loan, four house loan & S.B.I. life insurance policies of Rs.15 laks were issued by the bank. The applicant has alleged in para 6 of the statement of claim that during period of service of the applicant between 20.12.2007 & 16.12.2009 a visit was made by A.G.M. who commented on the work of the applicant & assured him to appoint him. It has been further alleged that in Goluwala branch of the bank for appointment of part time employee names were called by the bank from Hanumangarh District employment office & name of the applicant was existing in the list sent by employment office to the branch & applicant was also interviewed for the appointment. The applicant was assured that according to his experience & hard work opportunity will be provided to him but someone else was appointed on canvassing having no experience. When applicant pointed out to the injustice done to him he was assured to be considered for Srikanpur branch of the bank. After laps of few months again application were called for appointment of part time employee in Srikanpur branch. Applicant also deposited his form & appeared for interview but again appointment was given to somebody else.

5. It has been further alleged that applicant was shocked with above appearances & looking into the fact that there is no likelihood of justice being done to him from the side of the bank he presented an application before Regional Labour Commissioner (Central), Jaipur. The opposite party was called twice for conciliation at Jaipur & on two different occasions at Bikaner. The applicant had authorised the Labour Commissioner to take decision in his matter but there were no change in the attitude of the Branch Manager concerned. After removal from the service the applicant continued to request orally & in writing but the opposite party kept on drifting the matter ahead. On 30.11.2009 the applicant had sent a registered notice to the employer opposite party which remain unserved.

6. About the nature of the work the applicant has said that he was performing the job of a IVth class employee beside other work, e.g. cleaning of counter & chairs after opening of the bank & supplying of bank records to the employees of the bank as demanded by them time to time etc. It has been further alleged that the applicant is jobless since his removal & all the documents pertaining to the case including reference has been attached as enclosure to the statement of claim. The applicant has prayed that his removal from the service be declared illegal to have him reappointed with back wages & consequential benefits with continuity of service.

7. Opposite party has filed reply to the statement of claim on 29.8.12 which is in two parts. Part II contains para-wise reply of statement of claim & part I provides preliminary

objection against the claim. Para-wise reply says that workman has submitted wrong facts. Further it has been alleged the applicant Shri Shashi Bhushan was engaged for the first time w.e.f. 13.2.2008 & not from 27.12.2007 hence, statement of applicant about appointment on 27.12.2007 is wrong. It has been said that before the Conciliation Officer Sh. Shashi Bhushan has himself stated that the branch of the bank was opened only on 9.1.2008. It has also been said that the workman did not turn up for the duty in the bank after 27.11.2008 & did not perform any work thereafter hence, his statement is wrong that he worked continuously without any break upto 16.1.2009. It has also been admitted & alleged that the workman has worked only from 13.2.2008 to 27.11.2008 & that too not continuously but intermittently & as such he has not completed 240 days work as alleged hence, provision of section 25-F of Industrial Disputes Act, 1947 has no application in the case.

8. It has also been alleged that there has been no violation of provision of 'last come first go' as alleged by the applicant. It is also wrong that applicant was working on a permanent post as alleged by him in the statement of claim. It is also been said that it is important to point out that in para 1 of the statement of claim applicant himself had said that he was daily wage employee of IVth class.

9. It has been further contended in reply that as section 25-F of Industrial Disputes Act, 1947 is not attracted in the present case hence, the question of preparation of seniority list does not arise. It has also been said the applicant has worked only from 13.2.2008 to 27.11.2008 not continuously but intermittently which can be proved from the record of the bank & he has never worked from 25.12.2007 to 16.12.2009. It has been completely denied by the bank that the applicant has performed any work for the bank like opening of account etc. as alleged in para 6 of the statement of claim.

10. The bank has admitted about interviews conducted on two occasions as alleged in statement of claim & in the matter of appointment it has been further alleged by the bank in para 6 part II that opportunities of interviews provided to the applicant proves that bank had provided opportunity to the applicant to participate in the process of appointment & the selection process was never challenged by the applicant hence, he cannot raise any dispute against his non-selection after interview. About the nature of work which applicant has alleged to be performed by him during his continuance of service, it has been alleged by the opposite party that burden of prove lies on the applicant. It has been further alleged that applicant is not entitled to any relief as claimed by him.

11. In preliminary objection which forms part I of the reply to statement of claim it has been alleged that the dispute raised by the applicant is not within the scope of 'Industrial Dispute' as defined in Section 2-K of the Industrial Disputes Act, 1947 because there was no

existence of relationship of employer & employee between the bank & the workman at any point of time. Sh. Shashi Bhushan was never engaged by the bank in conformity to the policy of recruitment in the bank as such whatever work was performed by him cannot lend status of workman to Sh. Shashi Bhushan. The Hon'ble Supreme Court in catena of cases has laid down that any appointment given not in accordance to the rule & regulation of such appointment is itself vague & persons so appointed has no right to put any grievance relating to work done by him. Sh. Shashi Bhushan has worked only on daily wage & he has been paid at the rate of Rs. 50 per day which was accepted by him without any protest & reservation.

Facts of the case as per W.S.

12. According to the written statement of the bank Sh. Shashi Bhushan was engaged for sweeping the premises of the bank w.e.f. 13.2.2008 & he was paid by the bank through voucher for the work done by him & the payments made to him was never objected & accepted without any protest. It has been further alleged that he never worked continuously upto 27.11.2008 which can be established by record of the bank.

13. Because of electricity problem the management of the bank invited quotation for hiring a generator & the exercise for the same was undertaken by bank in the month of January, 2008. Certain persons submitted their quotations. Sh. Shashi Bhushan also submitted his quotation which was lowest & hence, he was awarded the contract for operating the generator & he was paid Rs. 6600 monthly for the same. Sh. Shashi Bhushan was responsible for operation & upkeep of the generator including oil, diesel, etc. in lieu of Rs.6600/- except the TDS which was deducted from the payment made to him & such payments were regularly by cheque credited to its saving bank accounts. Sh. Shashi Bhushan continued to operate the said generator at the branch upto date.

14. It has been further alleged that during the period when Sh. Shashi Bhushan was engaged for doing the work of sweeping he also participated in the interview for the post of sweeper. The list was obtained from District Employment Exchange Hanumangarh in which name of Sh. Shashi Bhushan was also forwarded to the bank along with other candidates. All such candidates whose names were forwarded by employment exchange were called to participate in the interview, however, Sh. Shashi Bhushan was not selected. The interview was conducted for branch of the bank situated at Goluwala. It has been further alleged that Sh. Shashi Bhushan has also participated in another interview held at the bank's branch at Karanpur.

15. Sh. Shashi Bhushan stopped performing the work w.e.f. 27.11.2008 for the reason best known to him & thereafter did not come to bank for the work. From above fact it is clearly established that Sh. Shashi Bhushan cannot

raise any dispute much less any industrial dispute including the branch at Goluwala.

Para wise reply of statement of claim.

16. In para wise answer to the statement of claim para 1 of the statement of claim has been said to be wrong & it has been further alleged that Sh. Shashi Bhushan was engaged with the bank for the first time w.e.f. 13.2.2008 & not from 27.12.2007 which itself is proved to be wrong because in para 2 of the purported dispute referred to Assistant Labour Commissioner cum Conciliation Officer (Central), Jaipur he has stated that branch of the bank was opened on 9.1.2008. Sh. Shashi Bhushan did not come to bank after 27.11.2008 & did not perform any work thereafter for the reason best known to him as such the contention of the workman that he continue to work without any break upto 16.1.2009 is wrong & denied by the bank. The workman worked only for the period 13.2.2008 to 27.11.2008 & that to intermittently & continuously hence he did not complete 240 days of the work as alleged by him, therefore, provision of Section 25-F of Industrial Disputes Act is not attracted in the present case.

17. It has also been said that principle of "last come first go" has not been violated by the bank & it is wrong to say that Sh. Shashi Bhushan was working on a permanent post as alleged in statement of claim because he himself has contended in para 1 of statement of claim that he was a daily wage employee. Since, Section 25-F of the Industrial Disputes Act, 1947 is not attracted in the present case the question of preparing of seniority list does not arise. Sh. Shashi Bhushan has worked intermittently between 13.2.2008 to 27.11.2008 & not from 26.12.2007 to 16.12.2009 as alleged by him para 6 of statement of claim & this fact can be proved from the record available with the bank. It has been further alleged that statement made in para 6 of statement of claim about work done by applicant is not accepted by the bank & the onus is on the workman to prove the same. The various opportunities to appear in the interview as alleged in the statement of claim proves that bank has provided fair opportunity by interviewing the workman along with other applicants but he could not be selected & selection proves has never been challenged by the applicant as such he cannot raise any dispute or complaint against his none selection. Statement made in para 9 & 10 of the claim has been denied & said that applicant is not entitled to any relief as claimed & the same may be dismissed with cost.

18. After filing of written statement by opposite party on 29.8.2012 next date was fixed on 12.11.2012 for rejoinder & filing of documents by workman. On 12.11.2012 workman was absent hence, 23.1.2013 was fixed for the same proceeding. On 23.1.2013 case was adjourned on request of workman & 9.4.2013 was next date fixed for rejoinder & document to be filed by workman. On 9.4.2013 & further dates fixed on 8.7.2013, 20.11.2013, 20.1.2014, 15.4.2014 &

23.4.2014 the workman remained absent & rejoinder & documents were not filed by him. On 9.4.2013 my learned predecessor passed an order to proceed ex-parte against the applicant workman & 8.7.2013 was date fixed for filing document by opposite party. Opposite party was present on 9.4.2013. On 8.7.2013 no document was filed by opposite party & learned presiding was on leave hence, 9.9.2013 was next date fixed & further on 9.9.2013, 20.11.2013 was next date fixed. On 9.9.2013 the court was vacant due to retirement of learned Presiding Officer in July, 2013. On 20.11.2013 next date 20.1.2014 was fixed for evidence to be adduced by the opposite party. On 20.1.2014 case was adjourned on the request of opposite party for evidence on 15.4.2014. On 15.4.2014 learned counsel for opposite party stated that no evidence has been adduced on behalf of applicant to prove the case of statement of claim which is responsibility of the workman hence, in such circumstance & in absence of evidence from the workman opposite party is not inclined to adduce any evidence. In above circumstance opportunity to opposite party for adducing evidence was closed & case was fixed for argument on 23.4.2014.

19. On 23.4.2014 learned counsel for opposite party was present. None was present for & on behalf of workman. Ex-parte argument of the learned counsel of the opposite party was heard.

20. It has been argued by learned counsel for the opposite party that applicant workman has not appeared in the witness box & adduced any oral evidence in support of his statement of claim hence, no relief can be granted in favour of applicant & the statement of claim is fit to be dismissed with cost in the above circumstance.

21. Initial burden was on the applicant workman to establish that his services were terminated by the non-applicant w.e.f. 16.1.2009 illegally without giving one month's notice or pay in lieu of notice. The claim of the workman has been denied by the non-applicant. The workman has not adduced any oral evidence to substantiate his case set forth in the claim statement.

22. In above facts & circumstances, it appears that the applicant workman is not interested to contest the case further. Therefore, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

23. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोनकटर आईआर सीटीसीएल पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 75/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/06/2014 को प्राप्त हुआ था 1

[सं. एल-41012/126/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 75/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Contractor IR CTCL and Western Railway, and their workmen, received by the Central Government on 03/06/2014.

[No. L-41012/126/2005 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 75/2006

Reference No. L-41012/126/2005-IR(B-I) dated : 26.6.2006

Shri Kamlesh Singh
S/o Shri Shiv Dayal
J.S. 21, C, Loco Colony,
Jaipur.

V/s.

1. H.D. & Sons Co.
Through Shri Hakim Chand,
35/11/13A, Parijat Sadan,
Room No.105, 1st floor, Bhugwat
Cross Lane, Girgav, Mumbai-3,
Mumbai.
2. M/s. Aahar Caterers
Through Shri Hakim Chand,
35/11/13A, Parijat Sadan,
Room No.105, 1st floor, Bhugwat
Cross Lane, Girgav, Mumbai-3,
Mumbai.
3. M/s. Good Food & Company
Through Shri Hakim Chand,
35/11/13A, Parijat Sadan,
Room No.105, 1st floor, Bhugwat
Cross Lane, Girgav, Mumbai-3,
Mumbai.

4. Indian Railway Catering & Tourism Corporation Ltd., 9th Floor,
Bank of Baroda Building,
Sansad Marg, New Delhi-16,
New Delhi.
5. The General Manager
Western Railway,
Church Gate, Mumbai.

Present:

- For the applicant : Ex-parte.
- For the non-applicants : Sh. Hawa Singh, Adv.
No. 1 to 3
- For the non-applicant No. 4 : Sh. G.C. Garg, Adv.
- For the non-applicant No. 5 : Sh. Sitaram Samota, Adv.

AWARD

Dated: 30.4.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial Dispute to this tribunal for adjudication:-

“Whether the termination of services of Shri Kamlesh Singh, vendor by verbal order in August, 2003 by Shri Hakim Chand, sub contractor of Indian Railway Catering and Tourism Corp. Ltd., New Delhi working in Western Railway, Mumbai is legal and Justified? If not, what relief the claimant is entitled to and from which date?”

2. According to statement of claim opposite parties 1 to 3 are three different companies under common proprietorship of Sh. Hakim Chand. Opposite parties No.4 & 5 have been providing business contract to opposite party No.1 to 3 all over India for management of pantry cars, in running trains for providing food, breakfast, tea etc. to passengers.

3. Opposite party No.1 to 3 the employers had provided employment to the applicant in December, 1998 on train in route from Jaipur to Chennai in pantry car & the employer got the applicant medically examined before placing him under employment. Certificate of medical examination A-1 is attached to statement of claim. The applicant was paid monthly remuneration beside 12% commission against the sale of goods by the applicant. Being satisfied with services of the applicant employers 1 to 3 promoted the applicant to the rank of Inspector.

4. In para 3 of statement of claim the applicant has alleged that based on his hard work & good behaviour employers opposite party 1 to 3 had engaged the applicant on monthly pay of Rs. 3000 beside 3% commission of

entire sale made by applicant. It has been further alleged that during his entire period of service there was no occasion to the employers to be dissatisfied with the services of rendered by the applicant & time to time his services were commended by opposite party & he was never served with charge sheet of any kind under standing orders. The applicant has worked for a period of 4 years 8 months when suddenly in the month of June, 2003 without serving any notice applicant was removed from the job by oral order. Applicant tried to know the reason for removal from the service by the employer time & again but no satisfactory answer was provided. Thereafter applicant presented an industrial dispute u/s 2-A for conciliation before the state government whereupon he learned that the dispute for conciliation should have been presented before the Central Government. Applicant moved application for conciliation before Assistant Labour Commissioner (Central)/ Labour Conciliation Officer, Jaipur which is annexure A-2 attached to statement of claim. On failure of conciliation proceedings matter was referred by Regional Labour Commissioner (Central), Jaipur on 1.7.2005 which is Annexure A-3 to the statement of claim. Thereafter the dispute as mentioned above was referred by Ministry of Labour for adjudication before this Tribunal.

5. It has been further alleged in para 7 of statement of claim that despite period of service for four years & four months rendered by the applicant he was neither given any notice before removal by oral order nor was given any compensation in violation of section 25-F, 25-G & 25-H of Industrial Disputes Act, 1947. It has been further alleged that u/s. 25-F notice & payment of compensation is necessary which has not been done by the employer & he has been removed from the employment despite the fact that persons junior to him are still working & there was no seniority list published by the employer thus, there has been open violation of provisions of Industrial Disputes Act, 1947. In above fact & circumstances, the applicant has prayed that he be reinstated with pay, allowances, commission & other benefits from the date he has been removed in June, 2003 & his removal be declared illegal & be cancelled.

6. According to reply of statement of claim filed by opposite party 2 & 3 preliminary objections have been raised before submitting para-wise reply of statement of claim. According to para wise reply to statement of claim, statement made in para 1, 2 to 4 & 7 have been specifically denied. Regarding para 6 it has been alleged that the statement made in para 6 is a matter of record & needs no answer. Against para 5 it has been said that there was no privity of contract between petitioner & answering respondents.

7. It has been further alleged that statement of para 1 is denied that respondent No.1 to 3 are under

proprietorship of one person & managing the maintenance of pantry car & catering to passengers throughout India. It has also been alleged that as per information available there are 31 licensee managing on board catering to the passenger in 264 pantry cars in railway in addition to the departmental catering. The maintenance of pantry cars were also done by concerned railway department & not by the answering respondents.

8. The petitioner was never the employee of the answering respondents from Dec., 1998 to June, 2003 & for the sake of brevity submissions made in preliminary objections may kindly be read as reply to the claim of para 2 to 4 of statement of claim. It has been further alleged that there is no violation of any provision of Industrial Disputes Act, 1947 & the petitioner may be directed to file the better particulars relating to averments made in the statement of claim. It has been further submitted that respondents reserve right to file detailed reply after filing of better document by the petitioner & also after the decision of preliminary submission made by respondents about territorial jurisdiction of this court to entertain the present dispute. At last it has been submitted that for the reasons given in answer to the statement of claim the claim of the petitioner is liable to be dismissed being devoid of merit.

9. In preliminary objection to the statement of claim it has been said that pantry car in a running train is not an 'industry' & the alleged dispute is not an 'industrial dispute' hence, the statement of claim may be dismissed on this count alone. Reference has been made to P.R. Catering V/s. State of Bihar & others. 2002 (1) LLJ 227 wherein it has been held that a pantry car in a running train is not an 'establishment'. The alleged ruling is annexed as R-1 to W.S. It has been further alleged that the firms Aahar Caterers & Good Food & Company have been dissolved in the year 2005.

10. It has been further alleged that the name of the firm Sh. Hakmi Chand is "M/s. Hakmi Chand D & Sons" which is a proprietorship firm & not a company as alleged in the statement of claim. The letter head with the name & style, "H.D. & Sons Company" may be a different company. The answering respondent "M/s. Hakmi Chand D & Sons" has no relation with "H.D. & Sons Company" & has no knowledge about "H.D. & Sons Company". In case the petitioner falsely wants to implicate M/s. Hakmi Chand D & Sons as respondent No.1 by this letter head the petitioner is liable for prosecution for an offense of forgery as this document is a forged computer generated letter head. It is also required to be noticed that by doing that the petitioner is also misleading the court. It has been further alleged that the claimant has not approached the court with clean hand & has suppressed vital & material facts.

11. It has been further alleged that claimant has not specified the period of working with the parties against

whom he seeks relief which is important in the light of labour acts which require that details & evidences of working against the parties to the alleged period of dispute. The applicant has also not specified the period with reference to claims against the answering respondents, hence the claim petition against the respondents is liable to be rejected. Petitioner was never an employee of either "M/s. Hakmi Chand D & Sons" or "M/s. Aahar Caterers" or "Good Food & Co.".

12. The answering respondents have further questioned the jurisdiction to entertain the statement of claim on the ground that cause of action has not arisen at Jaipur hence, this court has no territorial jurisdiction to entertain the claim of the applicant as none of the respondents work for gain at Jaipur & none of them reside within the territorial limit of this court. It has also been alleged that there is no privity of contract between applicant & answering respondents either at Jaipur or any place in India. It has also been alleged that the petitioner has given his residential address in Railway Colony though he is neither a railway employee nor a dependent of railway employee, thus by giving the address in railway colony he is trying to manipulate the matter of territorial jurisdiction at Jaipur.

13. It has also been alleged that Regional Labour Commissioner (Central) had directed the applicant to produce additional better documentary evidence e.g. copy of attendance register or other medical certificates but applicant had failed to provide the detail of his working during the alleged period with all the alleged three companies. Applicant has submitted the illegible copy of medical examination dated 19.12.2001 giving name of the licensee "Good Food & Co." & one illegible format of "HD & Sons Co." letter head with date 13/8 without mentioning the year. It has been further alleged that there is contradiction between the statement recorded before the R.L.C.(C) Jaipur & the fact mentioned by the applicant in the complaint before the R.L.C.(C), Jaipur hence, applicant may be directed to file better document and better particulars of his working with above named three companies as alleged in the statement of complaint by the applicant during the period Dec, 1998 to June, 2003. The medical fitness examination has been issued only for a period of one year hence, applicant may be directed to file fitness certificate for remaining alleged working period as no employee of railway or private licensee is allowed to cater or work in any pantry car unless he has a valid fitness certificate issued by a railway doctor. The medical certificate filed by the applicant is having overwriting with date deleted & overwritten & there is no mention made by the doctor whether the applicant is fit or unfit for the employment. It has been further alleged that medical certificate filed by the applicant is not genuine & answering respondents shall place their submissions at the time of argument in this matter.

14. It has been specifically denied that respondents 1 to 3 are under the sole proprietorship of one person & manage the maintenance & catering in the pantry car throughout India.

15. Reply to statement of claim filed by opposite party no.4 I.R.C.T.C has alleged that opposite party no.4 is a corporation of Government of India who issues licenses for pantry cars in running Indian railway trains & opposite party no.1 to 3 were licensed to manage catering & pantry cars in the trains in North India. For running the above business of management of pantry cars & catering services to the passengers opposite party no.1 to 3 were required to employ the workers & decide their working days/working hours & pay. The job of opposite party no.4 is only to issue the license. It has been further alleged that applicant Sh. Kamlesh Singh was appointed in Dec, 1998 in the pantry car of the train between Jaipur – Chennai & entire exercise regarding appointment was carried out by opposite party no.1 to 3 & they are the employer of the applicant & opposite party no.4 has not appointed the applicant hence, there is no relation of employer & employee between opposite party no.4 & applicant. The opposite party no.4 also has no control over the applicant & has no relation with the applicant. The claim filed against the opposite party no.4 is baseless & prime-facia fit to be dismissed in absence of employer-employee relationship.

16. In the para wise reply to the statement of claim para 2, 3 & 4, 5, 6, 7 of statement of claim has been denied. Against para 1 it has been admitted that opposite party no. 4 has been providing commercial contract by issuing license to opposite party no.1 to 3 for management of pantry car in the railway trains in North India for providing food, refreshment, tea etc. to passengers time to time. It has been further alleged that entire management of the pantry car including appointment of workers for pantry car, their pay, working day & working hours is the sole function of opposite party no.1 to 3.

17. It has been further alleged that opposite party no. 4 is unaware of appointment given to applicant in Dec, 1998 on Chennai- Jaipur bound trains by opposite party no.1 to 3 & opposite party no.4 has no relation or connection with such appointment. It has been alleged in para 2 of the parawise reply that applicant was paid beside pay 12% commission on the sale carried out by him & he was also promoted by opposite party no.1 to 3. Against reply to para 3 it has been alleged that opposite party no.4 is unaware about the fact that applicant was paid a monthly pay of Rs. 3000 & 3% commission on entire sale because opposite party no.4 is not concerned with pay & employment of the applicant.

18. Removal of applicant from employment by opposite party no.1 to 3 has been admitted in the month of June, 2003. It has also been admitted that applicant had raised an industrial dispute u/s 2-A of the Industrial

Disputes Act before the State Government which was rejected for want of jurisdiction whereupon the dispute was raised before the Labour Conciliation Officer/ Assistant Labour Commissioner (Central), Jaipur who submitted his report on 1st July, 2005 to Regional Labour Commissioner (Central), Jaipur. It has been said that nothing in connection with removal of the applicant from the job was done by opposite party no. 4 hence, it was not the concern of the opposite party no. 4 to give notice or compensation to the applicant in absence of employer-employee relationship, thus applicant is not entitled to any relief from opposite party no.4 & opposite party No. 4 has been impleaded as unnecessary party to the case & case against the opposite party no. 4 is fit to be dismissed.

19. In reply to the statement of claim by opposite party no. 5 it has been alleged in preliminary objection that applicant was never in employment of opposite party no. 5 & has no relation with applicant. The department of Railway gets the work done through contractor hence, applicant is not entitled to any relief from opposite party no. 5. It has also been said that applicant has not sought any relief against opposite party no.5 hence, answering respondent is unnecessary party.

20. In parawise reply to statement of claim, statement in para 1 & 6 has been admitted. It has been alleged about para 2, 3, 4, 5 that statements in these paras are not connected with opposite party no. 5 hence, there is no need to reply. Para 7 of the statement of claim has been specifically denied & have been said to be wrong. It has been further said that applicant has not been in employment of opposite party no. 5 & he has sought no claim from the department of opposite party no. 5. It has been prayed that claim may be dismissed with cost against the opposite party no.5, the answering respondent.

21. On 15.4.2010 applicant has filed the rejoinder wherein statements made in the statement of claim has been reiterated. On point of jurisdiction which has been raised as preliminary objection by opposite parties it has been said that Tribunal has jurisdiction to entertain the statement of claim.

22. During hearing of the case on 30.12.2013 when application of opposite parties were fixed for hearing applicant was absent, learned counsel for opposite parties were present, it was found on 30.12.2013 that applicant was continuously absent on passed dates 13.3.2013, 15.5.2013, 12.8.2013 & 23.10.2013. In above circumstance, order was passed on 30.12.2013 to proceed ex-parte against the applicant & case was fixed on 25.3.2014 for evidence of opposite party & disposal of application of opposite parties. On 25.3.2014 again applicant was absent, learned counsel for opposite party no.1 to 3 & 4 were present who stated that they do not intend to lead any evidence from the side of opposite parties as no evidence has been adduced by applicant. In above circumstance opportunity

of evidence for opposite party was closed & case was fixed on 23.4.2014 for ex-parte arguments.

23. Heard the argument of learned counsel for opposite party no.1 to 3, 4 & 5 & perused the file.

24. It has been argued by learned counsel for opposite party no. 1 to 3 that applicant has not proved the content of his statement of claim hence no relief can be granted to the applicant against opposite parties. Learned counsels for opposite party no.4 & 5 have argued that applicant has wrongly impleaded the opposite parties 4 & 5 as they have no role in appointment or removal of the applicant hence they are unnecessary parties to the case which is fit to be dismissed against them.

25. From perusal of the file it appears that applicant has not been taking part in the proceeding since 13.3.2013 & he had been continuously absent. Since 11.10.2012 there has been only once presence of applicant on 20.12.2012. From reference it appears that applicant is said to have been removed from alleged service in the month of August, 2003 whereas in statement of claim it has been said that he was removed in the month of June, 2003. Subsequently for amending the time mentioned in the statement of claim from June, 2003 to August, 2003 amendment applications have been moved by applicant on 15.6.2010 & 16.11.2010 which has been allowed by my learned predecessor on 15.12.2011 & case has been fixed on 15.2.2012 for cross-examination of the applicant but neither amendment has been incorporated in the statement of claim nor applicant has appeared on 15.2.2012 for his cross examination. This further indicates that even prior to his continuous absence applicant had been reluctant to take due interest & step to advance the further proceeding of the case.

26. Initial burden was on the applicant workman to establish by cogent evidence that his services were terminated by the non-applicant in the month of August, 2003 illegally without giving one month's notice or pay in lieu of notice. The claim of the workman had been denied by the answering concerned non-applicants. The workman has failed to adduce any oral evidence to substantiate his case set forth in the statement of claim.

27. In above facts & circumstances, it appears that the applicant workman is not interested to contest the case further. Therefore, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

28. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. एफ. रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 06/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2014 को प्राप्त हुआ था।

[सं. एल-41011/100/2009-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of N. F. Railway, and their workmen, received by the Central Government on 11/06/2014.

[No. L-41011/100/2009-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**IN THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM**

Present :

Sri L. C. Dey, M.A., LL.B., Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management of N. F. Railway, Maligaon, Guwahati.

Versus

Their Workman Sri Subodh Saha, Rep. by the General Secretary, Rail Mazdoor Union, Guwahati.

Ref. Case No. 06 of 2010

Appearances:

For the Management : Mr. S. N. Choudhury,
Advocate

For the Workman: Mrs. M. Bora, Advocate
Mr. N.K. Haloi, Advocate

Date of Award : 29.05.2014.

AWARD

1. In exercise of powers conferred by Clause (d) of Sub-Section (1) & (2A) of Section 10 of the Industrial Dispute Act, 1947 the Ministry of Labour & Employment, Government of India, has referred this Industrial Dispute raised by the workman Subodh Saha against the Management of N.F.Railway, vide Order No. L-41011/100/2009-IR(B-I); Dated: 03/05/2010 for adjudication. The Schedule of the Reference is as follows:

SCHEDULE

“Whether the demand of Rail Mazdoor Union for fixation of seniority of Shri Subodh Saha in the cadre of Open Line Organization from the date of his screening in construction organization is legal and justified? If yes, what relief the workman is entitled to?”

2. On receipt of the order of Reference this Reference Case has been registered and notices were served upon both the parties who appeared and contested the proceeding by filing their claim statement/written statement and adducing evidence along with documents.

3. The fact of the case of the workman, in nutshell, is that the workman Subodh Saha was employed by the management of N.F.Railway as Khalasi Helper in the establishment of Senior Divisional Electrical Engineer, Guwahati/ North East Frontier Railway (in short Sr.DEE/ GHY/N.F.Rly) and was posted under Sr. Section Engineer, Electrical at Pandu Power House of N.F.Railway. The workman was under administrative control of the Assistant Divisional Electrical Engineer, Maligaon, (in short ADEEN/ MLG) of the Electrical Department headed by its Principal Officer, known as Chief Electrical Engineer, N.F.Railway with its Head Quarter at Maligaon. The Divisional Railway Manager at Lumding Division of N.F.Railway is the Divisional Head controlling the electrical Department at Divisional level and the seniority of the workman is looked after by the Office of the Assistant Personal Officer, Guwahati, N.F. Railway in the personal matter. Initially the workman was engaged in railway service in Construction Wing as a casual labourer on 14.12.84 at Silchar and after obtaining the requisite qualification he was given the temporary status of service in the same construction wing in 1985; and he was screened for permanent service on 1.4.88 against the 60% construction reserved post as per the Rules under Deputy Chief Electrical Engineer (construction), Maligaon (in short Dy.CEE/Con./MLG) vide Office order No. E/227/CON/Elect dated 15.5.96. The workman was absorbed in Railway service as a regular employee and posted in the permanent post of Khalasi Helper on 1.4.1988 and rendered continuous service in the construction organization and was promoted to the post of Lineman which was a grade-III post and continued in that Organisation up to 1997. As per the letter issued by the Railway Ministry/Railway Board from time to time regarding staffing in construction organization by creation of the construction reserved post for posting in construction wing in Indian Railway as a matter of policy, and the N.F.Railway vide its letter No. Misc.1378/No.E/1/19(C) dated 14.7.1988 circulated the Ministry / Board's letter to meet the man power requirement in construction organization in N.F.Railway. The construction reserved post being the permanent post given to the appointees including workman, carried the surety of services on

permanent footing but their services in the construction organization was as per requirement of work available in the organization in the particular field which is in the case of the workman is electrical work of Construction Organisation. In implementing the policy of shedding extra work force the management sent in lots workmen occupying the post of construction reserved to the Open Line Wing of the N.F.Railway under the official authority. The present workman belong to such a lot was directed to report to the DEE, GHY of the Open Line Wing in terms of Dy.CEE./ Construction/MLG letter No.E/227/CON/Elect (Screening) dated 03.10.1997. Accordingly the workman resumed his work as Khalasi in the scale of Rs. 2550 Rs. 3200 on 22.10.1997 under DEE/GHY. The workman having been already appointed in a permanent post on a lien in substantive capacity in the permanent cadre of N.F.Railway and on his transfer to Open Line he was entitled to seniority on the basis of his lien. Further the workman was absorbed in regular post of Khalasi he was placed in Group D post of the 60% non-gazetted regular posts earmarked for Construction Organisation and as the workman was eligible for lien in a substantive post where it is maintained in its seniority is fixed with reference to the date of his absorption irrespective where his services were utilized in the regular capacity; and as such, on his placement in the seniority unit under Sr. DEE/GHY/N.F. Railway his seniority is to be fixed in terms of the maintenance of his slot according as the lien he hold in the substantive post of N.F. Railway of his relative inter-se seniority. The occupation of post of Khalasi amongst 60% non-gazetted regular post earmarked for the Construction Reserved Post as a whole. But it was not done and the workman was placed in the establishment of Sr.DEE/GHY/N.F.Railway far below the occupants in the posts of Khalasi in the pay scale of Rs. 2550 to Rs. 3200 in the said establishment who have been were his juniors in respect of his date of absorption in the 60% non-gazetted regular posts earmarked for the construction reserved post. In the provisional seniority list of Khalasi published under letter No.E/255/I/Pt.III dated 12.03.1999 by APO/GHY. The name of the workman is placed under serial No.32 which was later corrected and he was placed above Sri Uttam Bhattacharjee, his fellow appointee against 60% non-gazetted regular posts earmarked for the Construction Organisation and hence, the workman was treated junior to his erstwhile juniors.

The date of appointment to the substantive post in permanent cadre is the universal criteria for deciding the placement of an employee holding a civil post in the gradation list kept for the category of service he belongs to. The workman being a senior to the existing staff under the establishment of DEE/GHY who only by virtue of different placement of Railway either in the Open Line or in the Construction Organisation at various times, was absorbed in the establishment of DEE/GHY by picking up

for absorption against 60% non-gazetted regular post earmarked for construction organization. As such, those staff existing in the establishment of DEE/GHY prior to 22.10.1997 which is the date of reporting of the workman in the same establishment were treated senior although the date of appointment i.e. the date of screening of the workman, to the substantive post in permanent cadre by way of absorption of the workman in the Construction Organisation on 1.4.88 was far anterior to the date of appointment of those seniors. Thus the administration has mistaken in assigning the seniority of the workman below the latter appointees reckoning his permanent service in the establishment of DEE/GHY from the date of his reporting on 22.10.1997. Further the workman did not leave the Construction Organisation and joined the Open Line Organisation of the same zonal Railways at his own but under official direction. In Rule 312 of Indian Railway Establishment Manual Volume I of 1989 Edition it is provided that the seniority of staff transferred at their own request from one cadre/division to another cadre/division on the same Railway should be treated below that of the existing, confirmed, temporary and officiating railway servants in the relevant grade in the new establishment irrespective of the date of confirmation or length of officiating temporary service of the transferred railway servants. But the workman never requested to be sent to the Open Line Organisation from Construction Organisation nor the Management floated any option for the same situation as that of the workman for joining the establishment of DEE/GHY or for that matter any other Open Line establishment. Due to the aforesaid Act of the management by confining the prospect of career advancement and monetary benefits that would have come to the workman had he been assigned the correct seniority as to his junior, has infringed upon the workman's right guaranteed under Article 14, 16, 21 of the Constitution of India. The workman suffered irreparable loss for his stagnation in grade of Khalasi (helper) while his junior are gaining benefits of higher pay and perks offered through the 6th Central Pay Commission and he can never overtake them if he is not given the boost of his correct seniority over his juniors.

Under the above premises the workman prayed for passing necessary award granting the workman his lien and seniority from 1.4.1984 with direction to implement the award with retrospective effect along with consequential benefits of promotion/financial upgradation/promotion under policy of cadre restructuring at par with his juniors, correct all the seniority list where the workman has been given wrong seniority position and for maintaining correct seniority list and/or pass such or other order or orders deemed fit and proper.

The workman by filing Addl. Claim Statement denied the contention made by the management in their W.S. The workman mentioned that the seniority of the workman got

transferred and the same was maintained in the Open Line itself; that the workman's line is maintained by the APO, Guwahati; that the workman was work charged and not permanent in the Construction Organisation; that the irregularities in the seniority of all the employees serving in that establishment was corrected later on; that the screening was done much earlier than that of the workman; and that the seniority was given to the workman from the date of his screening making him senior to those whose screening was done later in the Unit they worked, before the workman arrived there. On transfer from the Construction Organisation.

4. The Management, on the other hand, submitted that the post of Open Line is a Revenue Post, on the other hand, the posts attached to Construction Organisation are worked charged post, which is a decided fact of N.F. Railway based on circumstances of the urgent occasion and need based, though both are under the same umbrella of Railway Organisation. All the incumbents working in the Construction Organisation under the work charged based having lien in the Open Line is maintained their seniority of staff comprising both Open Line and Construction Organisation, and their status in Construction Organisation while any selection is processed in Open Line both staff of the Open Line and Construction Organisations are called for as per seniority. On the other hand, no normal selection procedure is done at Construction Organisation in the exceptional circumstances which is time based and need based only; and some adhoc promotion are made amongst the Construction staff itself only and there is no claim of adhoc promotion of open line staff in construction organization. However, while regular selection is made in the Open line staff of construction line are being called as per seniority and as a matter of right, and the organizational structure of work force in N.F. Railway of the time under question do have substantial distinction between open line and the construction organization staff as far as establishment procedure is concerned. These two are in certain cases on establishment matters are not to be treated as on the same air-tightened line. It is also mentioned that the workman Sri Subodh Saha was transferred to open line providing certain provisions exclusively admissible to open line staff only and his seniority got transferred and subsequently the same is maintained in the open line itself only. There are certain laid down principle and guidelines for dealing with the labour disputes and to follow by the government organization like Railway as in the case; and the guidelines of labour dispute are to be placed before forum available between Railway administration and the recognized Union. But in the instant case the representation is made by the Rail Mazdoor Union which is not recognized by the Railway Administration and the workman has never brought his case through the recognized Union as per the guidelines. The workman representative i.e. Rail Mazdoor Union,

Pandu is an un-recognized which has no negotiating power with the management and as such, the Rail Mazdoor Union is misrepresentative of the workman in the present reference and as such, the issue of the workman can not be termed as an Industrial Dispute or as labour problem.

The management challenging the averments of the Union mentioned in their claim statements, stated inter-alia, that the workman was appointed as casual labourer and on being screened he was posted in construction organization and his seniority along with similarly situated persons of Construction Organisation whose lien are maintained at APO, Guwahati; and the open line cadre and construction cadre are distinctly separate establishment and the seniority of the workman in construction organization may differ in the open line. The management added that due to wrong fixation of seniority the workman was deprived of his promotional benefits under the restructuring of cadre; there is no incumbent junior to the workman had been promoted by the administration in the organization. It is further mentioned that the seniority is to be reckoned from the date of the screening of workman and no junior to the workman was promoted earlier and the seniority of the workman has been fixed correctly and maintained in the open line, and the process of Modified Assured Career Progression as admissible to the workman has already been issued. Therefore the management prayed to decide the issue against the workman and to dismiss the reference with cost.

The Management, however, filing their additional written statement stated that such staff absorbed in the Railways after screening will not be allowed the benefit of their service vis-à-vis other open line staff but inter-se seniority will be maintained in absorbing department whatsoever of the date of their physical absorption; and that the seniority of the workman Subodh Saha along with other similarly in the construction organization whose lien are maintained at APO, Guwahati.

5. The Union, in order to prove their case examined two witnesses namely the General Secretary of Rail Mazdoor Union, N.F. Railway, Maligaon as W.W.1 and the workman Sri Subodh Saha as workman witness No. 2, while the Management examined Sri Kabi Ram Boro, Divisional personnel Manager, Guwahati as MW.1. Both the parties submitted their written argument also they have placed their oral argument. Let us discuss the evidence of the witnesses for both the sides first.

6. According to the W.W.1, Sri Mridul Kr. Das, the General Secretary, Rail Mazdoor Union, Pandu, Guwahati, the workman Subodh Saha was an employee of the establishment of Senior Divisional Electrical Engineer, Guwahati and was appointed as a casual labourer on 15.3.85 in Construction Organisation of N.F. Railway. The workman was screened for permanent service on 1.4.88

against 60% construction reserved post under the Chief Electrical Engineer, Construction, Maligaon vide Railway Memo No. 52/96 dated 15.5.96 marked as Exhibit-1 and hence, the absorption of the workman in permanent post is evident from the Exhibit-1. Thereafter the workman was promoted to the grade-III post of Lineman while in the service of the construction organization vide Office Order No. 7/88 dated 28.9.88 marked as Exhibit-2. Subsequently as per the need of the Railway management to shed extra workforce under not required for the work in the construction organization he has been sent to open line vide Railway letter No. E/255/CON/SENIORITY/CL/PT-VII (Elect.) dated 1.10.97 issued by the Dy. Chief Personnel Officer (Construction) for General Manager, Construction and accordingly the workman was spared from the construction organization on 20.10.97 vide letter No. EL/CON/LMG/ESTT/2 dated 20.10.1997 vide Exhibit-4. The workman continued his service in the construction organization upto 1947 and during that period the seniority of the workman was not disclosed by the management in his substantive post of Khalasi amongst those appointed in that Grade in the open line organization but the workman had an inherent right to lien in the open line organization in suitable unit with effect from the date of his permanent absorption in the post of 60% construction reserved as the construction reserved posts are permanent post which is evident from the letter dated 14.7.88 marked as Exhibit-3. The W.W.1 also examined that the Railway Board's letter No. E(NG)II/84/PO/SE/30 dated 21.6.1988 included "it is, however reiterated, that Construction Reserve is to be created only for Posts chargeable for General Charges". That these posts of which one was occupied by the workman were on General Charges as all permanent appointments are not work charged. As the workman was sent to establishment of Senior Divisional Electrical Engineer, Guwahati from construction organization, his seniority in this establishment in his group-D grade would be according to his lien in the open line reckoning from the date of his permanent absorption on 1.4.88 but the workman has not been assigned the correct seniority in the establishment of Senior Divisional Engineer, Guwahati in Group-D grade of Khalasi. But he was given a slot in the gradation list far below the staff appointed much later than him. The witness concerned has cited example of a workman Sri Gopal Sarkar who was appointed on 11.4.1997 was given the 3rd slot in the gradation list whereas the workman absorbed on 1.4.88 were given as 3rd slot and in support of his contention the W.W.1 has produced a seniority list of Khalasi (P) in the scale of Rs. 2550 to 3200 as on 1.4.98 as per the seniority list enclosed with Exhibit-3. As such, due to wrong assignment of the seniority to the workman in the establishment of Senior Divisional Engineer, Guwahati his juniors reckoning from the date of his absorption in the permanent post were appointed in the permanent post later on him but placed in the gradation

list above the workman as a result his juniors were promoted which is clear from the statements marked as Exhibit-6.

The W.W.1 in support of his statement cited the provision of Rule 12 of Railway Establishment Manual Volume-I, 1989 Edition and submitted that the action of the management in transferring the workman from construction organization to the open line with seniority below the incumbents in the grade of Khalasi Helper in the seniority list under Sr. DEE, Guwahati at his place of posting is without any legal basis and in violation of the standing rules.

In his cross-examination the W.W.1 mentioned that the Railway Organisation being a vast one and for smooth functioning the Railway Establishment has been divided into two Branches namely open line and construction organization and there are two GMs for both the Open Line and Construction Organization. He denied the suggestion that the respective General Manager control the administration in their branches and the seniority of the staff is maintained separately. He categorically stated that the General Manager, open line maintains the seniority of the staff as a whole. He denied the suggestion that the seniority may differ from open line and construction but the irregularity in seniority in the construction was corrected by the authority later on; and the date of seniority is maintained from the date of screening.

The workman witness No. 2 Mr. Subodh Saha, the claimant himself stated that on his request to arrange for redressal of his grievances regarding fixation of seniority in the cadre of open line organization from the date of screening in the construction organization, the Rail Mazdoor Union, N.F. Railway, Pandu, raised this dispute. He was appointed as casual labourer on 15.3.85 in the construction organization of N.F. Railway and he was screened for permanent service on 1.4.88 against 60% construction reserved post under Divisional Chief Electrical Engineer, Construction, Maligaon vide their letter marked as Exhibit-1. The workman was promoted to Grade-III post Lineman while his service in construction organization vide Exhibit-2; and he continued in the construction organization upto 1997 but during that period the Railway Administration never disclosed his seniority position in the substantive post of Khalasi among those appointed in that grade in the open line organization. The W.W.2 further mentioned that due to requirement of the railway the Management to shed extra workforce not required for the work in the construction organization the worker had been sent to open line in batches. Accordingly the workman was spared from construction organization on 20.10.97 vide Exhibit-4. The workman claimed that he is a permanent Railway workman from the date of his absorption against 60% construction reserved post and hence, he had acquired a right to lien in the open line organization in suitable unit with effect from the date of

his permanent absorption in the construction organization. He also mentioned that the construction reserved post are permanent reserved post and he took the support of his contention by dint of the letter marked as Exhibit-3. He also mentioned that the Railway Boards letter No.E(NG)II/84/PO/SE/30; dated 21.6.88 which provided as "It is, however reiterated, that Construction Reserve is to be created only for Posts chargeable to General Charges; these posts of which one was occupied by the workman were on General Charge as all permanent appointments are not work charged as all fortuitous appointments are". Hence, the claimant contended that he is entitled for a lien in the open line with effect from 1.4.88 i.e. from his absorption as a regular employee in the construction organization, and his date of appointment in the substantive post is permanent cadre which is universal cadre for deciding his seniority in the gradation list maintained in the open line for the grade of Khalasi Helper. The workman was sent to the establishment of Senior Divisional Electrical Engineer, Guwahati from the Construction organization in Group-D grade and as such, his seniority of this establishment would be according to his lien in the open line reckoning from the date of his appointment i.e. on 1.4.88. But it was not done by the management assigning him the correct seniority in the establishment of SDE, Guwahati in his Group-D grade of Khalasi he was given a slot in the gradation list of Khalasi (P) far below the staff appointed much later than him. He cited an example of Sri Gopal Sarkar who was appointed on 11.4.1997 was given 3rd slot in the gradation list whereas the workman absorbed on 1.4.88 was given the 30th position vide the provisional seniority list of Khalasi (P) grade enclosed with the letter proved as Exhibit-3. He further contended that due to wrong assignment of seniority in the establishment of SDE, Guwahati his juniors reckoning from the date of his absorption in permanent post who were appointed in permanent post later than him, placed in the gradation list above him and they could utilize the opportunity of their seniority in getting promotion including the promotion through restructuring of cadre before the workman as a result, he had been deprived of getting promotion and other benefits. The workman in order to justify his contention cited the provision of Rule 12 of Railway Establishment Manual, Volume-I, 89. Hence, the workman prayed for relief for grant of his lien and seniority from 1.4.88.

During his cross-examination the W.W.2, stated that initially he was appointed as casual labourer and thereafter he was screened and was engaged as Lineman; and that their seniority is being maintained by APO, Guwahati, N.F. Railway. He also mentioned that there are two organization in N.F. Railway i.e. open line and construction organization and at the time of his engagement he was aware that his engagement was a work charged worker which is created as per requirement of the Management

for a particular period. He also said that he did not know the seniority in construction department may not be maintained in the open line. He further stated that the workman namely K.K. Kakoti, Naba Kumar Gogoi, and Dilip Kr. Roy were engaged in construction department on 1.1.84, 3.8.89 and 3.8.89 respectively and they were made senior to him after their engagement in Open Line but he did not know if the seniority is maintained in the Open Line from the date of screening. He added that so far he knew that none of the workers belong to construction department superseded him. He also did not know whether the process of Modified Assured Career Progression Policy is admissible in respect of fixation of seniority of the workman.

7. The Management Witness No. 1 (M.W.1), Sri Kabi Ram Boro, the Divisional Personal Officer, N.F. Railway, Maligaon, in his evidence stated that the post of Open Line is a revenue post, while the posts attached to Construction Organization are work charged post; the seniority of and all the incumbents working in the Construction Organization under the work charge posts having lien in the Open Line is maintained comprising the staff of both Open Line and Construction Organization. He added that while any selection is processed in Open Line, the staff of Open Line and Construction Organization are called for as per seniority and in case of regular selection made in the Open Line. The staff of Construction Organization are being called for according to seniority. The M.W.1 further mentioned that the workman was transferred to Open Line providing him certain provisions exclusively admissible to the Open Line staff only and his seniority got transferred and subsequently the same is maintained in the Open Line. The workman was appointed as Casual Labourer and on being screened, he was posted under Construction Organization; and the seniority of the workman similarly situated persons of Construction Organization is maintained by the A.P.O. Guwahati. The M.W.1 contended that it is not correct that due to wrong fixation of seniority the workman deprived of promotion benefit under the restructuring of cadre; and that no incumbent junior to him have been promoted by the administration in organization. Rather the seniority of the workman reckoned from the screening and as such, he has been awarded seniority from the date of his screening. It is also mentioned by the M.W.1 that the staff absorbed in Railway after screening will not be allowed the benefits of their service vis-à-vis other Open Line staff, but inter-se seniority would be maintained in absorbing department irrespective of their date of physical absorption.

During his cross-examination the M.W.1 said that absorption in permanent post means absorption against revenue post and not in any work charged or temporary post; and once a Railway employee posted in Open Line he acquires a right of lien which carry with him in the even on his transfer to any other organization. He admitted the

fact that the workman was permanently absorbed against sixty percent construction reserved permanent post with effect from 01.04.1988 in the Construction Organization vide Exhibit No. 1 which was issued on the strength of Railway Board's circular letter dated: 21.06.1988 marked as Exhibit No. 3. He again mentioned that the provisions for lien has been in chapter 26 in Rule 239 of Indian Railway Establishment Code, Volume I, Fifth Edition 1985 vide Exhibit No. A(1). It is further stated that in case of transfer from one organization to another on administrative ground, the lien once acquired will not be disturbed or changed; and the workman was given protection in respect of his lien as per Rule 311 of Indian Railway Establishment Manual, Volume I, 1989 marked as Exhibit No. B. Wherein the Exhibit No. B(1) is the relevant Rule. It is stated by the M.W.1 that the workman was transferred on administrative ground from Construction Organization to Open Line, but he did not know if any combined seniority list of the workman was prepared during the relevant period. He also admitted that the workman is entitled to get seniority with effect from the date of screening i.e. 01.04.1988.

8. Both the parties have submitted their respective written arguments. They have also made oral arguments.

On perusal of the evidence adduced by both the sides along with the documents relied upon by them it is found that the workman was engaged on 14.12.2014 as Casual Labourer in Construction Organisation, N.F. Railway and he was screened on 01.04.1988 for permanent posts against sixty percent permanent Non-Gazetted construction reserved posts; and on 20.10.1997 he was spared from the Construction Organization vide the letter marked as Exhibit-4; and on 22.10.1997 the workman resumed his duty in Open Line as Khalashi under DEE, Guwahati are admitted facts. The crux of the dispute is whether the inter-se seniority of the workman was maintained in the Open Line with effect from the date of his permanent absorption on 01.04.1988 in the Construction Organisation as claimed by the Union.

During argument Mrs. M. Borah, Learned Advocate for the Union submitted that in Railway substantive appointment is regulated by provisions of Indian Railway Establishment Code, Volume I, wherein Rule 238 provides that (a) two or more Railway servant can not be appointed to the same permanent post at the same time, (b) a Railway servant can not be appointed substantively to a post on which another Railway servant holds a lien. Rule 239 defines the word lien "unless in any case it be otherwise provided in these Rules a Railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other post. Mrs. Borah, Learned Advocate, also submitted that the Construction Organisation does not maintain a cadre of permanent staff of the rank of Khalasi

and substantive absorption or appointment can not be given in Open Line as permanent cadre is maintained only there; and all promotions to substantive grades are in Open Line. The Rule is that a person may be allowed or taken to work for the Construction Organisation but his lien would remain in the Open Line where his substantive appointment was given. Whenever any junior is promoted or considered for promotion in the Open Line where his lien is the senior person, even if he is working in the Construction irrespective of whether in the Open Line he was first engaged as Casual Labour, Ad-hoc appointee or regular appointee would be given the same opportunity for promotion/consideration for promotion in the Open Line or in case he continued in the Construction Organisation he would enjoy all the benefits of promotion there as his junior might enjoy in the Open Line. As such if the workman's seniority is fixed with effect from 01.04.1988 i.e. the date of absorption in regular post on screening, his seniority will entitle him due benefits of seniority slot in the Gradation List of Khalashi (P) in Open Line and the Gradation List of Khalashi (P) marked as Exhibit-6 which has not been controverted by the Management and the said Gradation List in Open Line is the supporting document for deciding the Reference in favour of the workman. Mrs. Borah added that the Management never disclosed the seniority of the workman in his substantive post of Khalashi among those appointed in the grade in the Open Line before his joining the Open Line on transfer in the interest of the Management; and that the Management in clear violation of the rights of the workman as well as against the principle of natural justice the workman was transferred to and given a lower seniority position. Learned Advocate for the Union again submitted that the Management failed to publish combined seniority list of the incumbents available in the SDEE, Guwahati after inclusion of the workman brought on transfer on administrative reasons from construction to Open Line. Learned Advocate for the Union in support of her contention relied upon the decision of the Hon'ble Supreme Court in *Inderpal Yadav and Others etc.* -vrs- *Union of India and Others etc.* in Writ Petitions No. 147, 320-369, 454, 4335-4434 of 1983.

Mrs. Borah, Learned Advocate for the workman cited the example of discrimination as well as violation of the Railway guidelines and the Rules framed from time to time regarding preparation of seniority list of the Group-D employee in Open Line. She referred the provisional seniority list of Khalashi (P) as on 01.04.1998 prepared by A.P.O, Guwahati vide Exhibit-3 (in four pages) showing the statement enclosed with the Exhibit-3, wherein one Sri Gopal Sarkar who was appointed on 18.09.1997 and his screening i.e. absorption in permanent post was on 11.04.1997; was placed at the sl. no. 3 while the workman Subodh Saha was screened for permanent absorption on 14.12.1984 and his date of joining under Open Line was

22.10.1997 has been shown at sl. no. 32 of the aforesaid seniority list. Since the seniority of the workman is to be fixed on lien from the date of his screening and the same should be maintained on his transfer on administrative ground from Construction Organisation to Open Line, the Management after transferring the workman from construction to Open Line with seniority of the workman below the incumbents in the grade of Khalashi already in the seniority unit under Sr. DEE, Guwahati at his place of posting is without any legal basis and in violation of the standing Rules. In order to justify the aforesaid argument Learned Advocate for the Union referred the provisions of Railway Board's circular No. E(NG)/II/2012/PO/GENL/01; dated: 10.05.2002.

Mr. S.N. Chowdhury, Learned Advocate for the Management vehemently objected to the submission of the Learned Advocate for the Union and submitted that the workman was promoted as Lineman-III on Ad-hoc basis in Construction Organisation and had been transferred to Electrical Department, Guwahati as Khalashi helper on 22.10.1987, and his lien was not fixed in Electrical Department, Guwahati and hence the seniority of the workman was fixed from the date of joining at Guwahati on transfer. Mr. Chowdhury also pointed out that a seniority list was prepared vide letter no. 255/1/Part.III; dated: 12.03.1999, (Exhibit-3) and the staff were requested to submit representation within thirty days but no representation was submitted by the worker and hence the seniority list was finalised; and at this belated stage a settled issue can not be reopened to review; and as such the claim of the workman is not legal and genuine one, for which the workman is not entitled to any relief in this Reference.

9. From the evidence of both the sides it is found that the workman was screened for permanent absorption on 01.04.1988 against sixty percent construction reserved post under CEE, Construction, Maligaon (vide Exhibit-1). The M.W.1 Sri Kabi Ram Boro, the Divisional Personnel Officer, N.F. Railway, Maligaon, categorically mentioned that the seniority of all the incumbents working in Construction Organisation under the work charged post having lien in the Open Line is maintained comprising the staff of both the Open Line and Construction Organisation; and that the seniority of the workman was reckoned from the date of screening and as such, the workman has been awarded seniority from the date of his screening. He also admitted that the workman was permanently absorbed against sixty percent construction reserved permanent post with effect from 01.04.1988 and that in case of transfer from one organization to another on administrative ground, and the lien once acquired will not be disturbed or changed as per Rule 311 of Indian Railway Establishment Manual, Volume-I, 1989 marked as Exhibit B and as such the workman is entitled to get seniority with effect from 01.04.1988 thus it is found well established that the

seniority of the workman is required to be maintained with effect from the date of his permanent absorption i.e 01.04.1988 against the sixty percent reserved quota in the Construction Organisation.

Mr. S.N. Choudhury in his argument clearly mentioned that the seniority list was published vide management letter no. 255/1/PT.III; dated: 12.03.1999 with direction to submit objection, if any, within thirty days, but the workman did not make any representation against the said seniority list and there is no chance of any remedy after lapse of stipulated period. The M.W.1 in his cross-examination categorically mentioned that the workman was transferred from Construction Organisation and he was given protection in respect of his lien, but he could not say if any combined seniority list of the workman was prepared during the relevant period. The Union also pleaded that the management although mentioned that the seniority of the workman has been maintained with effect from 01.04.1988 which is the date of permanent absorption but, actually it was not done. The Union also categorically mentioned that no combined seniority list of the workers belonging to both the Construction Organisation and Open Line with effect from the date of screening was prepared. The Union cited certain instances of the irregularities done by the management in fixing the seniority vide the seniority list of Khalashi in the scale of Rs. 2,550 to 23,200 as on 01.04.1988 issued by the management on 12.03.1999 proved (vide Exhibit-3, page 4 and 5); and the provisional seniority list of Khalashi helper in scale of Rupees 2,650 to 4,000 as on 01.04.2000 issued by the A.P.O, N.F. Railway, Guwahati under Memo No. E/255/1/Guwahati (P)-1055; dated: 08.08.2000 vide Exhibit-6.

Lien as described in Rule 239 of Indian Railway Establishment cadre, Volume.I (1985) that unless in any case it be otherwise provided in these Rules a Railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other posts. In Indian Railway Establishment Manual Volume.I (1989) Clause 311 and 312 it has been clearly mentioned that the seniority of the Railway servant on transfer from one cadre to another in the interest of administration is regulated by the date of promotion/date of appointment to the grade as the case may be; while the seniority of Railway servants on transferred at their own request from one Railway to another should be allotted below that of the existing confirmed, temporary and officiating Railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred Railway servants. The Railway Board have reviewed the matter regarding seniority and promotion of the Railway servant who were permanently absorbed against the construction reserved quota and circulated by Railways vide their no. E(NG)-II/2002/P.O/Gnl./1; dated: 10.05.2002

in terms of the instructions contained in Board's letter no. E(NG)-III/69/CD/42; dated: 24.12.1973, wherein it was observed as under:

"The Board have reviewed the matter and come to the conclusion that with the above developments having taken place the concept of construction reserve has already lost its utility and therefore, should no longer be used for any purpose whatsoever, if any staff happen to continue in the construction/projects without a position/lien in the Open Line in the appropriate category, immediate action should be taken to provide him the same to that there is no difficulty at the time of his repatriation from the construction/project when the need arises and he does not suffer in the matter of seniority and promotion.

In this connection I am inclined to rely upon the decision of the Hon'ble Supreme Court held in Writ Petitions no. 147, 322-69, 454, 4335-4434/83 etc. wherein it was observed as:

"To avoid violation of Art. 14, the scientific and equitable way if implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing these with the longest service. If in the process any adjustments are necessary the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over these who have joined later on. In other words, the principle of last come first go or to revere it first come last go as enunciated in Sec. 25G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly."

On scrutiny of the document marked as Exhibit-1 it appears that the workman Subodh Saha on being screened by the screening committee and approved by competent authority was absorbed against permanent post of sixty percent construction reserve with effect from 01.04.1988. From the list of provisional seniority of Khalashi (P) as on 01.04.1998 issued vide Memo no. 255/J/Pt.III; dated: 12.03.1999 issued by A.P.O, Guwahati (vide page no. 4 and 5 of Exhibit-3), the workman Gopal Sarkar who was appointed on 11.04.1997/18.09.1997 has been shown sl. no. 3 while the workman Subodh Saha who was appointed temporarily on 14.12.1984 and was permanently absorbed with effect from 01.04.1984 and has been transferred to Open Line on 22.10.1997 has been shown at sl. no. 32 of the aforementioned seniority list wherein there appears discrepancies/anomalies in the seniority list in respect of date of engagement and absorption against permanent posts. The provisional seniority list of Khalashi (helper) as on 01.04.2000 prepared by the A.P.O vide no. E/255/1/Ghy(P)-1055; dated: 08.08.2000 marked as Exhibit-6 shows that the workman Sarvanath Deka at sl. no. 32 was appointed on 23.12.1988 and promoted on 01.03.1993 as

Khalashi (helper) and the incumbent against Sl. no. 168 Sri Gopal Sarkar in the said seniority list (Exhibit-6) who was appointed on 11.04.1997/18.09.1997 was promoted as Khalashi (helper) on 24.03.2000. Although the management in their written statement and the evidence of M.W.1 mentioned that the seniority of the workman Subodh Saha was maintained with effect from the date of his permanent absorption i.e. 01.04.1988 they have not been able to establish their plea as there is nothing on record to show that the combined seniority list in respect of the posts of Khalashi was prepared by them. Even the M.W.1 being the Divisional Personnel Officer, N.F. Railway could not specifically state if any combined seniority list of the workman concerned was prepared. In para 12 of master circular no. E(NG).II/83/CL/SC/9; dated: 07.05.1983 and in para 2511 (a) of IREM it runs as:

“Seniority:

Service prior to absorption in the regular cadre will not count for seniority, which will be determined on the basis of regular appointment after due screening/selection vis-à-vis other regular Railway servants, subject to the provision that if the seniority of certain individual Railway servants has already been determined in any other manner pursuant to judicial decision or otherwise, the same share not be altered.”

Thus it is crystal clear that the Management have not been able to shift their burden to prove that amalgamated list of seniority of the workmen belonging to the post of Khalashi of both the Construction Organisation and Open Line was prepared by the management. Under the above circumstances it can safely be held that the seniority of the workman Subodh Saha was not maintained by the Management on his transfer from Construction Organisation to Open Line as per the guidelines issued by the Indian Railway from time to time as well as the Railway establishment manual.

10. In view of my foregoing discussion and the findings arrived at as above it can safely be opined that the seniority of the workman Subodh Saha in the cadre of Open Line Organisation from the date of screening in Construction Organisation has not been maintained by the Railway as per the guidelines issued by the Railway Board from time to time, and the provisions of Railway Establishment Manual and Indian Railway Establishment Code as mentioned above. Accordingly it is held that the demand of the Rail Mazdoor Union for fixation of seniority of Sri Subodh Saha in the cadre of Open Line Organisation from the date of his screening (i.e. on 01.04.1988) in construction organization is legal and justified; and the workman Subodh Saha is entitled to his seniority in the Open Line Organisation with effect from 01.04.1988. The Management of N.F. Railway is to prepare an amalgamated list of workers in the cadre of Khalashi taking into consideration the date of screening of the workman Subodh

Saha on 01.04.1988 in Construction Organisation, and also to provide the consequential benefit/benefits to the workman.

11. In the result this Reference is decided in affirmative in favour of the Union.

Given under my hand and seal of this Court on this 29th day of May, 2014.

Send the Award to Government immediately as per procedure.

L. C. DEY, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 05/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल-41011/99/2009-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of N. F. Railway, and their workmen, received by the Central Government on 27/06/2014.

[No. L-41011/99/2009 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present :

Sri L. C. Dey, M.A., LL.B., Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management of N. F. Railway, Maligaon, Guwahati.

Versus

Their Workman Sri Uttam Bhattacharjee, Rep. by the General Secretary, Rail Mazdoor Union, Guwahati.

Ref. Case No. 05 of 2010

Appearances:

For the Management : Mr. K. C. Sharma,
Advocate

For the Workman : Mrs. M. Bora, Advocate

Date of Award : 16.06.2014

AWARD

1. In exercise of powers conferred by Clause (d) of Sub-Section (1) & (2A) of Section 10 of the Industrial Dispute Act, 1947 the Ministry of Labour & Employment, Government of India, has referred this Industrial Dispute raised by the workman Uttam Bhattacharjee, represented by the Rail Mazdoor Union against the Management of N.F.Railway, vide Order No. L-41011/99/2009-IR(B-I); Dated: 03/05/2010 for adjudication. The Schedule of the Reference is as follows:

SCHEDULE

“Whether the demand of Rail Mazdoor Union for fixation of seniority of Shri Uttam Bhattacharjee in the cadre of Open Line Organization from the date of his screening in construction organization is legal and justified? If yes, what relief the workman is entitled to?”

1. On receipt of the order of Reference this Reference Case has been registered and notices were served upon both the parties who appeared and contested the proceeding by filing their claim statement/written statement and adducing evidence along with documents.

2. The fact of the case of the workman Uttam Bhattacharjee, in nutshell, is that the workman was engaged by the management of N.F.Railway as Khalasi Helper in the establishment of Senior Divisional Electrical Engineer, Guwahati, North East Frontier Railway (in short Sr.DEE, GHY, N.F.Rly) and was posted under Sr. Section Engineer, Electrical at Pandu Power House of N.F.Railway. The workman was under administrative control of the Assistant Divisional Electrical Engineer, Maligaon, (in short ADEEN, MLG) of the Electrical Department headed by its Principal Officer, designated as Chief Electrical Engineer, N.F.Railway with its Head Quarter at Maligaon. The Divisional Railway Manager at Lumdirtg Division of N.F.Railway is the Divisional Head controlling the electrical Department at Divisional level and the seniority of the workman is looked after by the Office of the Assistant Personal Officer, Guwahati, N.F. Railway in the personal matter. Initially the workman was engaged in railway service in Construction Wing as a casual labourer on 15.03.85 and after obtaining the requisite qualification he was given the temporary status of service in the same construction wing in 1985; and he was screened for permanent service

on 1.4.88 against the 60% construction reserved post as per the Rules under Deputy Chief Electrical Engineer (construction), Maligaon (in short Dy.C.E, CON, MLG) vide Office order No. E/227/CON/Elect dated 15.5.96. The workman was absorbed in Railway service as a regular employee and posted in the permanent post of Khalasi Helper on 1.4.1988 and rendered continuous service in the construction organization and was promoted to the post of Lineman which was a grade-III post and continued in that Organisation up to 1997. As per the letter issued by the Railway Ministry/Railway Board from time to time regarding staffing in construction organization by creation of the construction reserved post for posting in construction wing in Indian Railway as a matter of policy, and the N.F.Railway vide its letter No. Misc.1378/No.E/1/19(C) dated 14.7.1988 circulated the Ministry / Board's letter to meet the man power requirement in construction organization in N.F.Railway. The construction reserved post being the permanent post given to the appointees including workman, carried the surety of services on permanent footing but their services in the construction organization was as per requirement of work available in the organization in the particular field which is in the case of the workman is electrical work of Construction Organisation.

The Union mentioned that in implementing the policy of shedding extra work force not required in the Construction Organisation the management sent in lots workmen occupying the post of construction reserved to the Open Line Wing of the N.F. Railway under the official authority. The present workman belong to such a lot was directed to report to the DEE, GHY of the Open Line Wing in terms of Dy.CEE./Construction/MLG letter No.E/ 227/ CON/ Elect (Screening) dated 03.10.1997. Accordingly the workman resumed his work as Khalasi in the scale of Rs. 2550 to Rs.3200 on 22.10.1997 under DEE/GHY. The workman having been already appointed in a permanent post on a lien in substantive capacity in the permanent cadre of N.F.Railway and on his transfer to Open Line he was entitled to seniority on the basis of his lien. Further the workman was absorbed in regular post of Khalasi he was placed in Group D post of the 60% non-gazetted regular posts earmarked for Construction Organisation and as the workman was eligible for lien in a substantive post wherein his seniority is fixed with reference to the date of his absorption irrespective of where his services were utilized in the regular capacity; and as such, on his placement in the seniority unit under Sr. DEE/GHY/ N. F. Railway his seniority is to be fixed in terms of the maintenance of his slot according as the lien he hold in the substantive post of N.F.Railway and of his relative inter-se seniority. The occupation of post of Khalasi amongst 60% non-gazetted regular post earmarked for the Construction Reserved Post as a whole. But it was not done and the workman was

placed in the establishment of Sr.DEE/GHY/N.F.Railway far below the occupants in the posts of Khalasi in the pay scale of Rs. 2550 to Rs.3200 in the said establishment who had been his juniors in respect of his date of absorption in the 60% non-gazetted regular posts earmarked for the construction reserved post. In the provisional seniority list of Khalasi published under letter No. E/255/I/Pt.III dated 12.03.1999 by APO/GHY. Wherein the name of the workman is placed under serial no.30 which was later corrected and he was placed below Sri Subodh Saha, his fellow appointee against 60% non-gazetted regular posts earmarked for the Construction Organisation and hence, the workman was treated junior to his erstwhile juniors. The workman represented to the Authorities for correction of his seniority which yielded no result. Hence the workman being represented by the Rail Mazdoor Union raised this Industrial Dispute.

The date of appointment to the substantive post in permanent cadre is the universal criteria for deciding the placement of an employee holding a civil post in the gradation list kept for the category of service he belongs to. The workman being a senior to the existing staff under the establishment of DEE/GHY who only by virtue of different placement of Railway either in the Open Line or in the Construction Organisation at various times, was absorbed in the establishment of DEE/GHY by picking up for absorption against 60% non-gazetted regular post earmarked for construction organization. As such, the staff those existing in the establishment of DEE/GHY prior to 22.10.1997 which is the date of reporting of the workman in the same establishment were treated senior although the date of appointment i.e. the date of screening of the workman, to the substantive post in permanent cadre by way of absorption of the workman in the Construction Organisation on 1.4.88 was far anterior to the date of appointment of those seniors. Thus the administration has mistaken in assigning the seniority of the workman below the later appointees reckoning his permanent service in the establishment of DEE/ GHY from the date of his reporting on 22.10.1997. Further the workman did not leave the Construction Organisation and joined the Open Line Organisation of the same zonal Railways at his own but under official direction. In Rule 312 of Indian Railway Establishment Manual Volume I of 1989 Edition it is provided that the seniority of staff transferred at their own request from one cadre/division to another cadre/division on the same Railway should be treated below that of the existing, confirmed, temporary and officiating railway servants in the relevant grade in the new establishment irrespective of the date of confirmation or length of officiating and temporary service of the transferred railway servants. But the workman never requested to be sent to the Open Line Organisation from Construction Organisation nor the Management floated

any option for the same situation as that of the workman for joining the establishment of DEE/GHY or for that matter any other Open Line establishment. Due to the aforesaid Act of the management by confining the prospect of career advancement and monitory benefits that would have come to the workman had he been assigned the correct seniority as to his junior, has infringed upon the workman's right guaranteed under Article 14, 16, 21 of the Constitution of India. The workman suffered irreparable loss for his stagnation in grade of Khalasi (helper) while his junior are gaining benefits of higher pay and perks offered through the 6th Central Pay Commission and he can never overtake them if he is not given the boost of his correct seniority over his juniors.

Under the above premises the workman prayed for passing necessary award granting the workman his lien and seniority from 1.4.1988 with direction to implement the award with retrospective effect i.e from the permanent absorption in the post of Khalashi Helper on 01.04.1988 against 60% non-gazatted regular post of construction reserve earmarked for the Construction Organisation after he was released from this post in the Construction Organisation w.e.f. 03.10.1997 in terms of DCEE, (CON, Maligaon's) letter no. E/ 227/CON/Elect (Screening); dated: 03.07.1997 along with consequential benefits of promotion/ financial up-gradation/promotion under policy of cadre restructuring at par with his juniors, correct all the seniority list where the workman has been given wrong seniority position and for maintaining correct seniority list and/ or pass such or other order or orders deem fit and proper.

4. The Management, on the other hand, alleging that the reference is not maintainable in law as well as in fact and is liable to be dismissed, submitted that the post of Open Line is a Revenue Post, while the posts attached to Construction Organisation are work charged post, which is a decided fact in N.F.Railway based on circumstances of the urgent occasion and need based, though both are under the same umbrella of Railway Organisation. The seniority of all the incumbents working in the Construction Organisation under the work charged based having lien in the Open Line is maintained comprising both Open Line and Construction Organisation, and their status in Construction Organisation while any selection is processed in Open Line both staff of the Open Line and Construction Organisations are called for as per seniority. The management mentioned that no normal selection procedure is done at Construction Organisation in the exceptional circumstances which is time based and need based only; some adhoc promotion are made amongst the Construction staff itself only and there is no claim of adhoc promotion of open line staff in construction organization. However, while regular selection is made in the Open line staff of construction line are being called as per seniority and as a matter of right, and the organizational structure

of work force in N.F. Railway the time under question do have substantial distinction between open line and the construction organization staff as far as establishment procedure is concerned. These two are in certain cases on establishment matters are not to be treated as on the same air-tightened line. It is also mentioned that the workman Sri Uttam Bhattacharjee was transferred to open line providing certain provisions exclusively admissible to open line staff only and his seniority got transferred and subsequently the same is maintained in the open line itself.

The management denying the contents of the claim statement of the union as mentioned in para 7, 8 and 10 submitted that there are certain laid down principle and guidelines for dealing with the labour disputes and to follow by the Government organization like Railway as in the case; and the guidelines of labour dispute are to be placed before forum available between Railway administration and the recognized Union. But in the instant case the representation is made by the Rail Mazdoor Union which is not recognized by the Railway Administration and the workman has never brought his case through the recognized Union as per the guidelines.

The management challenging the averments of the Union mentioned para 13, 14, 15 and 16 of their claim statements, stated inter-alia, that the seniority of the workman along with similarly situated persons of Construction Organisation whose lien are maintained. It is further mentioned that there is no scope for promotion of the juniors to the workman superseding him at any point of time and that in this connection A.C.P as admissible has already been issued vide No. E/GHY/110/MACP/(P-PNO/MLG); dated: 25.08.2010.

5. The Union, in order to prove their case, examined two witnesses namely the General Secretary of Rail Mazdoor Union, N.F.Railway, Maligaon as W.W.1 and the workman Sri Uttam Bhattacharjee as workman witness No.2. While the Management examined Sri Anil Kumar Sarma, Office Superintendent, N.F. Railway, Office of the Assistant Personnel Officer, Guwahati as MW.1. Both the parties were allowed chances to argue their respective cases and the union submitted their argument in writing while the management failed to argue in spite of getting sufficient opportunity. Let us discuss the evidence of the witnesses for both the sides.

6. According to the W.W. 1, Sri Mridul Kr. Das, the General Secretary, Rail Mazdoor Union, Pandu, Guwahati, the workman Uttam Bhattacharjee was an employee of the establishment of Senior Divisional Electrical Engineer, Guwahati was appointed as a casual labourer on 15.3.85 in Construction Organisation of N.F.Railway. The workman was screened for permanent service on 1.4.88 against 60% construction reserved post under the Chief Electrical Engineer, Construction, Maligaon vide Railway Memo

No. 52/96 dated 15.5.96 marked as Exhibit-1 and hence, the absorption of the workman in permanent post is evident from the Exhibit-1. Thereafter the workman was promoted to the grade-III post of Lineman while in the service of the construction organization. Subsequently as per the need of the Railway management to shed extra workforce not required for the work in the construction organization he has been sent to Open Line and accordingly the workman was spared from the construction organization on 20.10.97 vide letter No.EL/CON/LMG/ ESTT/ 2 dated 20.10.1997 vide Exhibit-2. Therefore the workman was permanent Railway employee from the date of his absorption from 60% reserved posts and he had an inherent right to lien in the Open Line Organisation which is evident from letter No. Misc. 1378/No.E/ 7/19(C); dated: 14.07.1988 marked as exhibit-3. The workman continued his service in the construction organization. Thereafter the workman was sent to the establishment of Sr.DEE, Guwahati from Construction Organisation. Hence his seniority in this establishment in his Group-D grade would be according to the lien in the Open Line reckoning from the date of his appointment i.e. 01.04.1988. But it was not done by the management. Instead of assigning the workman the correct seniority in the establishment of Sr.DE, Guwahati in his Group-D grade of Khalashi and the workman was given a slot in the gradation list of Khalashi (P) for below the staff appointed much later than the workman.

The W.W.1 also mentioned that one Sri Gopal Sarkar who was appointed on 11.04.1997 who was given the third slot in the gradation list (marked as Exhibit-4). The W.W.1 further stated that the seniority of the workman is to be fixed on lien from the date of his screening and it is to be maintained on his transfer on administrative ground from Construction Organisation to the Electrical Establishment of Sr.DEE, Guwahati in Open Line. In support of his contention the W.W. 1 referred the provisional seniority list of Khalashi (P) as on 01.04.1998 vide Exhibit-4. The W.W. 1 also relied upon the Rule 12 of Railway Establishment Manual Volume I of 1989 edition. In course of his cross-examination the W.W.1 stated that the workman is a member of their union but he did not submit any document in this regard. He confirmed that the workman was engaged as casual worker on 15.03.1985 under construction and in 1988 the workman was screened and his appointment was made permanent under N.F. Railway Organisation against 60% of the reserved vacancy under Construction Organisation. He also added that at the time of appointment of workman as permanent. Some other workers who joined prior to and after the joining of Uttam Bhattacharjee when made permanent. He mentioned that the Exhibit-1 is a list prepared for the purpose of making the appointment of the workman permanent, but it is not the basic seniority list. He again stated that the workman was taken the Open Line but his seniority was not maintained in the Open Line at that time. He also said that

he have not specifically mentioned that which of the workman superseded Uttam Bhattacharjee. However he the W.W.1 denied the suggestion that no workman junior to Uttam Bhattacharjee was superseded for which he could not mention the name of any workman who superseded Uttam Bhattacharjee. He mentioned that he could not say if the management determined the date of joining on 01.04.1988 same for all the workmen, and if the management maintained the seniority on the basis of the age senior of the workman accepting common date of joining in the same category.

The workman witness No.2 Mr. Uttam Bhattacharjee, the claimant himself stated that on his request to arrange for redressal of his grievances regarding fixation of seniority in the cadre of open line organization from the date of screening in the construction organization, the Rail Mazdoor Union, N.F.Railway, Pandu, raised this dispute. He was an employee of Sr. DEE, Guwahati and he was screened for permanent service on 1.4.88 against 60% construction reserved post under Divisional Chief Electrical Engineer, Construction, Maligaon vide their letter marked as Exhibit-1. The workman was promoted to Grade-III post Lineman while his service in construction organization; and he continued in the construction organization upto 1997. He also mentioned that had been sent to Open Line and was spared from construction organization on 20.10.97 vide Exhibit-2. The workman claimed that he is a permanent Railway workman from the date of his absorption against 60% construction reserved post and hence, he had acquired a right to lien in the open line organization in suitable unit with effect from the date of his permanent absorption in the construction organization. He again stated that the construction reserved post are permanent reserved post and he took the support of his contention by dint of the letter marked as Exhibit-3. He also mentioned that the Railway Boards letter No.E(NG)II/84/PO/SE/ 30; dated 21.6.88 which provided as "It is, however reiterated, that Construction Reserve is to be created only for Posts chargeable to General Charges; these posts of which one was occupied by the workman were on General Charge as all permanent appointments are not work charged as all fortuitous appointments are". Hence, the claimant contended that he is entitled for a lien in the Open Line with effect from 1.4.88 i.e. from his absorption as a regular employee in the construction organization, and his date of appointment in the substantive post is permanent cadre which is universal criteria for deciding his seniority in the gradation list maintained in the open line for the grade of Khalasi Helper. The workman was sent to the establishment of Senior Divisional Electrical Engineer, Guwahati from the Construction organization in Group-D grade and as such, his seniority of this establishment would be according to his lien in the open line reckoning from the date of his appointment i.e. on 1.4.88. But it was not done by the

management assigning him the correct seniority in the establishment of SDE, Guwahati in his Group-D grade of Khalasi he was given a slot in the gradation list of Khalasi (P) far below the staff appointed much later than him. He cited an example of Sri Gopal Sarkar who was appointed on 11.4.1997 was given higher place in the gradation list whereas the workman absorbed on 1.4.88 was given the 30th position vide the provisional seniority list of Khalasi(P) grade proved as Exhibit-4. He further contended that due to wrong assignment of seniority in the establishment of SDE, Guwahati his juniors reckoning from the date of his absorption in permanent post who were appointed in permanent post later than him, placed in the gradation list above him and they could utilize the opportunity of their seniority in getting promotion including the promotion through restructuring of cadre before the workman. As a result, he had been deprived of getting promotion and other benefits. The workman in order to justify his contention cited the provision of Rule 311 and 312 of Railway Establishment Manual, Volume-I, 1989 proved as Exhibit-5. Hence, the workman prayed for relief for grant of his lien and seniority from 1.4.88.

The W.W.2 categorically mentioned that due to wrong assignment of his seniority in the establishment of Senior DE, Guwahati his juniors reckoning from the date of his absorption in permanent post who were appointed in the permanent posts later than him were placed in the gradation list above the workman and they could utilize the opportunity of their seniority in getting promotion etc. The workman in support of his plea relied upon the statement of provisional seniority list of Khalasi (helper) as on 01.04.2000 (marked as Exhibit-6). Wherein the name of the workman has not been included. Thereby the juniors to the workman have been promoted to the post of Khalasi Helper in suppression of his dues which has been shown in the statement. Hence the workman prayed for relief of grant of lien and seniority w.e.f. 01.04.1984 to the workman and other consequential benefits.

During his cross-examination the W.W.2, stated that initially he was not a member of the union and in the year 1999 after discovery of non-inclusion of his name in the seniority list (Exhibit-6) he became the member of Rail Mazdoor Union. He also said that he complained before his office about making Sri Gopal Sarkar senior to him. The workman added that there are names of some other men who superseded him appeared in Exhibit-4. He also said that he has not mentioned in his evidence in a affidavit specifically which of the workman superseded him.

7. The Management Witness No. 1 (M.W.1), Sri Anil Kumar Sarma, Office Superintendent in the Office of the Assistant Personnel Officer, N.F. Railway, Guwahati who is acquainted with the facts and circumstances of the case, stated that the workman Uttam Bhattacharjee was engaged as casual labourer under Construction

Organisation w.e.f. 15.03.1985 and was screened on 01.04.1988 for appointment against permanent post of 60% construction reserved vacancy, and that the workman was spared from Construction Organisation, Lumding on 20.10.1997 for joining in the Open Line. He mentioned the workman joined in Open Line on 22.10.1997 and as per Rules and procedure adopted by Railway, after sparing of a workman from Construction Organisation he loses his seniority attained in Construction Organisation where the employees are engaged on time base need, based project works and on completion of the project subject to completion of 360 days as he was given temporary status the staff is released for Open Line on being spared from construction. He further mentioned that both the Construction Organisation and Open Line are under control and supervision of one General Manager each, and the seniority of the workman is counted from the date of his joining in the Open Line and not from the date of his screening in Construction Organisation as such the workman is not entitled to seniority from the date of his screening in Construction Organisation. However, he is entitled to all other incidental financial benefits including pensionary benefit w.e.f. the date of his screening. Accordingly the workman was granted one A.C.P on completion of 12 years from the date of his screening. The M.W.1 contended that the workman joining in the Open line do not suffer any financial loss nor he was superseded by any other workman who joined in the Open Line after his joining either directly or from Construction Organisation. As such the workman is not entitled to the seniority as prayed for.

During his cross-examination the M.W.1 stated that in the letter marked as Exhibit-3 it is mentioned that the increase in the construction reserved posts from 40% to 60% will be applicable only for his staff chargeable to the general charges and that the workman was not granted lien from the date of his screening; but he could not say if the workman was entitled to lien at the relevant time. However, the M.W.1 admitted that as per Rule 239 of Indian Railway Establishment Code, Volume I Fifth Edition, 1985 the workman was entitled to lien w.e.f. the date of his screening in Construction Organisation, but there is nothing on record to show that the workman was allowed lien from the date of his screening he also said that as per Railway Board's Circular No. E(NG)-II/2002/PO/GENL/1; dated: 10.05.2002 the workman became entitled to get his lien in the Construction Organisation w.e.f 01.01.1989 but the workman was not granted lien. He also said that under what circumstances the lien was not granted to the workman he could not say. He again mentioned that the seniority is counted in Railway from the date of joining against the permanent post. The M.W.1 also admitted the fact that the workman Bishu Ranjan Biswas has been shown senior to the workman Uttam Bhattacharjee in the statement marked as Exhibit-6 while the workman Uttam

Bhattacharjee joined the Construction Organisation and screened on 01.04.1988 vide Exhibit-4. He further mentioned that as Bishu Ranjan Biswas joined in Open Line earlier to the date of joining of Uttam Bhattacharjee in Open Line for which Bishu Ranjan Biswas has been shown senior to Uttam Bhattacharjee. However, the management M.W.1 denied the suggestion that due to non implementation of Rule 311 of IREM, Volume I (Exhibit-B-I) in the case of the workman Uttam Bhattacharjee who was deprived of getting his seniority from the date of joining in Open Line for which the workman has been made junior to others who joined after him.

8. The Union have submitted their written arguments, while the management in spite of getting sufficient time and opportunity failed to argue their case.

On perusal of the evidence adduced by both the sides along with the documents relied upon by them it is found that the workman was engaged on 15.03.1985 as Casual Labourer in Construction Organisation, N.F. Railway and he was screened on 01.04.1988 for permanent posts against sixty percent permanent Non-Gazetted construction reserved posts; and on 20.10.1997 he was spared from the Construction Organization vide the letter marked as Exhibit-4; and on 22.10.1997 the workman resumed his duty in Open Line as Khalashi under DEE, Guwahati:- are admitted facts. The crux of the dispute is whether the workman is entitled to inter-se seniority in the Open Line with effect from the date of his permanent absorption on 01.04.1988 in the Construction Organisation as.

During argument Mrs. M. Borah, Learned Advocate for the Union submitted that the workman Uttam Bhattacharjee was permanently absorbed against 60% reserved quota of construction and hence the workman hold permanent post in Railway w.e.f 01.04.1988 against a regular post as a substantive appointee, which is well established in this reference. In Railway substantive appointment is regulated by provisions of Indian Railway Establishment Code, Volume I, wherein Rule 238 provides that (a) two or more Railway servant can not be appointed to the same permanent post at the same time, (b) a Railway servant can not be appointed substantively to a post on which another Railway servant holds a lien. Rule 239 defines the word lien "unless in any case it be otherwise provided in these Rules a Railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other post. Mrs. Borah, Learned Advocate, also submitted that the Construction Organisation does not maintain a cadre of permanent staff of the rank of Khalasi and substantive absorption or appointment can not be given in Open Line as permanent cadre is maintained only there; and all promotions to substantive grades are in Open Line. The Rule is that a person may be allowed or taken to

work for the Construction Organisation but his lien would remain in the Open Line where his substantive appointment was given. Whenever any junior is promoted or considered for promotion in the Open Line where his lien is, the senior person, even if he is working in the Construction irrespective of whether in the Open Line he was first engaged as Casual Labour, Ad-hoc appointee or regular appointee would be given the same opportunity for promotion/ consideration for promotion in the Open Line, or in case he continued in the Construction Organisation he would enjoy all the benefits of promotion there as his junior might enjoy in the Open Line. As such if the workman's seniority is fixed with effect from 01.04.1988 i.e the date of absorption in regular post on screening, his seniority will entitle him due benefits of seniority slot in the Gradation List of Khalashi (P) in Open Line. Mrs. Bora, Learned Advocate pointed out that the Gradation List of Khalashi (P) marked as Exhibit-6 which has not been controverted by the Management and the said Gradation List in Open Line is the supporting document for deciding the Reference in favour of the workman. Mrs. Borah added that the Management never disclosed the seniority of the workman in his substantive post of Khalashi among these appointed in the grade in the Open Line before his joining the Open Line on transfer in the interest of the Management; and that the Management in clear violation of the rights of the workman as well as against the principle of natural justice transferred workman to Open Line and given a lower seniority position. Learned Advocate for the Union again submitted that the Management failed to publish combined seniority list of the incumbents available in the Sr. DEE, Guwahati after inclusion of the workman brought on transfer on administrative reasons from construction to Open Line. Learned Advocate for the Union in support of her contention relied upon the decision of the Hon'ble Supreme Court in Inderpal Yadav and Others etc. -vrs- Union of India and Others etc. in Writ Petitions No. 147, 320-369, 454, 4335-4434 of 1983.

In order to justify the claim of the workman, Mrs. Borah, Learned Advocate for the workman cited the example of discrimination as well as violation of the Railway guidelines and the Rules framed from time to time regarding preparation of seniority list of the Group-D employee in Open Line. She referred the provisional seniority list of Khalashi (P) as on 01.04.1998 prepared by A.P.O, Guwahati vide Exhibit-4, wherein one Sri Gopal Sarkar who was appointed on 18.09.1997 and his screening i.e absorption in permanent post was on 11.04.1997; was placed at the sl. no. 3 while the workman Uttam Bhattacharjee was screened for permanent absorption on 01.04.1988 and his date of joining under Open Line was 22.10.1997 has been shown at sl. no.30 of the aforesaid seniority list. Since the seniority of the workman is to be fixed on lien from the date of his screening and the same should be maintained

on his transfer on administrative ground from Construction Organisation to Open Line, the Management after transferring the workman from construction to Open Line with seniority of the workman below the incumbents in the grade of Khalashi already in the seniority list under Sr. DEE, Guwahati at his place of posting is without any legal basis and in violation of the Railway Manual, orders of the Railway Board and the Rules. Learned Advocate for the Union referred the provisions of Railway Board's circular no. E(NG)/II/2002/PO/GENL/01; dated: 10.05.2002.

9. From the evidence of both the sides it is found that the workman was screened for permanent absorption on 01.04.1988 against sixty percent construction reserved post under CEE, Construction, Maligaon (vide Exhibit-1). According to the M.W.1 Sri Anil Kumar Sarma, Office Superintendent, Office of the Assistant Personnel Officer said that the workman was engaged as casual labourer under Construction Organisation on 15.03.1985 and he was given temporary status on 10.03.1984. Subsequently the workman was screened on 01.04.1988 for appointment against permanent post of 60% construction reserved vacancy; and that the workman joined the Open Line on 22.10.1997. He also mentioned that the workman was spared from Construction Organisation, Lumding on 20.10.1997 and as per the Rules and procedure adopted by Railway a workman after sparing from Construction Organisation he loses his seniority attained in construction, and there is no promotion avenue and increment benefit for the workman in Construction Organisation and the seniority of the workman is counted from the date of his joining in the Open Line. While in his cross-examination the M.W.1 narrated a different version that he could not say if the workman was entitled to lien at the relevant time, while he admitted that as per Rule 329 of Indian Railway Establishment Code Volume-I 1985 edition the workman was entitled to lien w.e.f. the date of his screening in Construction Organisation but there is nothing on record to show that the workman was allowed lien from the date of his screening; and according to Railway Board Circular No. E(NG)-II/ 2002/P0/ GENL/1; dated: 10.05.2002 the workman is entitled to get his lien in the construction line w.e.f. 01.01.1989 but the workman was not granted lien. The M.W.1 has also admitted the contents of the documents marked as Exhibit- 1, Exhibit-3, Exhibit-4 and Exhibit-5 along with the provisions of Rule 311 of Indian Railway Establishment Manual Volume I, 1989 marked as Exhibit-B. Thus the evidence of the M.W.1 is found contradictory rather he admitted the plea of the union that the workman is entitled to lien in Construction Organisation from the date of his screening against 60% reserved quota. Further the union categorically mentioned that no combined seniority list of the workers belonging to both the Construction Organisation and Open Line w.e.f the date of screening was prepared by the management. The irregularities done by the management in fixing the

seniority vide seniority list of Khalashi in the scale of Rs. 2,650/- to Rs. 4,000/- as on 01.04.2000 marked as Exhibit-6 wherein the name of the workman has not been included. There is nothing on record to show that the workman was transferred to Open Line at his instance. Thus it is found well established that the workman is entitled to get seniority with effect from 01.04.1988 his seniority was required to be maintained with effect from the date of his permanent absorption i.e 01.04.1988 against the sixty percent reserved quota in the Construction Organisation.

Lien as described in Rule 239 of Indian Railway Establishment cadre, Volume.I (1985) that unless in any case it be otherwise provided in these Rules a Railway servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien provisionally acquired on any other posts. In Indian Railway Establishment Manual Volume.I (1989) Clause 311 and 312 it has been clearly mentioned that the seniority of the Railway servant on transfer from one cadre to another in the interest of administration is regulated by the date of promotion/ date of appointment to the grade as the case may be; while the seniority of Railway servants on transfer at their own request from one Railway to another should be allotted below that of the existing confirmed, temporary and officiating Railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred Railway servants. The Railway Board have reviewed the matter regarding seniority and promotion of the Railway servant who were permanently absorbed against the construction reserved quota and circulated by Railways vide their no. E(NG)- II/ 2002/ P.O/ GENL/1; dated: 10.05.2002 in terms of the instructions contained in Board's letter no. E(NG)-III/69/ CD/42; dated: 24.12.1973, wherein it was observed as under:

“The Board have reviewed the matter and come to the conclusion that with the above developments having taken place the concept of construction reserve has already lost its utility and therefore, should no longer be used for any purpose whatsoever, if any staff happen to continue in the construction/projects without a position/ lien in the Open Line in the appropriate category, immediate action should be taken to provide him the same to that there is no difficulty at the time of his repatriation from the construction/project when the need arises and he does not suffer in the matter of seniority and promotion.”

In this connection I am inclined to rely upon the decision of the Hon'ble Supreme Court held in Writ Petitions no. 147, 322-69, 454, 4335-4434/83 etc submitted by the Learned Representative of the union, wherein it was observed as:

“To avoid violation of Art. 14, the scientific and equitable way if implementing the scheme is for the

Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing these with the longest service. If in the process any adjustments are necessary the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over these who have joined later on. In other words, the principle of last come first go or to revere it first come last go as enunciated in Sec. 25G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly.”

On scrutiny of the document marked as Exhibit-1 it appears that the workman Uttam Bhattacharjee on being screened by the screening committee and approved by competent authority was absorbed against permanent post of sixty percent construction reserve with effect from 01.04.1988. From the list of provisional seniority of Khalashi (P) as on 01.04.1998 issued vide Memo no. 255/J/Pt.III; dated: 12.03.1999 issued by A.P.O, Guwahati (Exhibit-4), shows that the workman Gopal Sarkar who was appointed on 11.04.1997/18.09.1997 has been shown sl. no. 3 while the workman Uttam Bhattacharjee who was appointed temporarily on 14.12.1984 and was permanently absorbed with effect from 01.04.1988 and has been transferred to Open Line on 22.10.1997, has been shown at sl. no. 30 of the aforementioned eniority list wherein there appears discrepancies/anomalies in the seniority list in respect of date of engagement and absorption against permanent posts. The provisional seniority list of Khalashi (helper) as on 01.04.2000 prepared by the A.P.O. vide no. E/255/1/ Ghy(P)-1055; dated: 08.08.2000 marked as Exhibit-6 shows that the workman Sarvanath Deka at sl. no. 32 was appointed on 23.12.1988 and promoted on 01.03.1993 as Khalashi (helper)) wherein the name of the workman Uttam Bhattacharjee was not included. Although the management in their written statement as well as the evidence of M.W.1 mentioned that the seniority of the workman Uttam Bhattacharjee was maintained with effect from the date of his permanent absorption i.e 01.04.1988 they have not been able to establish their plea as there is nothing on record to show that the combined seniority list in respect of the posts of Khalashi was prepared by them. Even the M.W.1 being the Office Superintendent, Office of the Assistant Personnel Officer, N.F. Railway could not specifically state if any combined seniority list of the workman concerned was prepared. In para 12 of master circular no. E(NG),II/83/ CL/SC/9; dated: 07.05.1983 and in para 2511 (a) of IREM it is stated as:

“Seniority:

Service prior to absorption in the regular cadre will not count for seniority, which will be determined on the basis of regular appointment after due screening/selection vis-a-vis other regular Railway servants, subject to the

provision that if the seniority of certain individual Railway servants has already been determined in any other manner pursuant to judicial decision or otherwise, the same shall not be altered.”

Thus it is crystal clear that the Management have not been able to shift their burden to prove that the amalgamated list of seniority of the workmen belonging to the post of Khalashi of both the Construction Organisation and Open Line was prepared by the management. Under the above circumstances it is found well established that the seniority of the workman Uttam Bhattacharjee was not maintained by the Management on his transfer from Construction Organisation to Open Line as per the guidelines issued by the Indian Railway from time to time as well as the Railway Establishment Manual as mentioned above.

10. In view of my foregoing discussion and the findings arrived at as above it can safely be opined that the seniority of the workman Uttam Bhattacharjee in the cadre of Khalashi in the Open Line Organisation from the date of screening in Construction Organisation has not been maintained by the Railway as per the guidelines issue by the Railway Board from time to time, and the provisions of Railway Establishment Manual and Indian Railway Establishment Code as mentioned above. Accordingly it is held that the demand of the Rail Mazdoor Union for fixation of seniority of the workman Sri Uttam Bhattacharjee in the cadre of Open Line Organisation from the date of his screening (i.e on 01.04.1988) in construction organization is legal and justified; and the workman Uttam Bhattacharjee a is entitled to his inter-se seniority in the Open Line Organisation with effect from 01.04.1988. The Management of N.F. Railway is to prepare an amalgamated seniority list of workers in the cadre of Khalashi in the light of the guidelines of Railways Board, Indian Railway Establishment Manual and the Indian Railway Code for the Accounts Department taking into consideration the date of screening of the workman on 01.04.1988 in Construction Organisation, and also to provide the consequential benefit/benefits to the workman.

11. In the result this Reference is decided in affirmative in favour of the Union.

Given under my hand and seal of this Court on this 16th day of June, 2014.

Send the Award to Government immediately as per procedure.

L. C. DEY, Presiding Officer

नई दिल्ली, 3 जुलाई 2014

का.आ. 1943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 50/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2014 को प्राप्त हुआ था 1

[सं. एल-12012/86/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 50/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 11/06/2014.

[No. L-12012/86/2005 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT BANGALORE

Dated : 2nd June 2014

Present : Shri S N NAVALGUND, Presiding Officer

C R No. 50/2005

I Party

Shri Kannaiah,
S/o late Ayya Swamy,
No. 1, 1st Floor,
B R Colony, Vidyanagar
Corss, Bettahalasur Post,
BANGALORE.

II Party

The General Manager (IR),
State Bank of India,
Local Head Office,
St. Marks Road,
Church Street,
BANGALORE – 560 001.

Appearances:

I Party : Shri B D Kuttappa, Advocate

II Party : Shri A G Shivananda, Advocate

AWARD

1. The Central Government vide order No. L-12012/86/2005-IR(B-I) dated 16.11.2005 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the management of State Bank of India is justified by dismissing Shri Kannaiah, Clerk-cum-typist from the services of the Bank with effect from

2.6.2004? If not, what relief he is entitled to and from which date?”

2. On receipt of the reference while registering it in C R 50/2005 when the notices were issued to both the sides, they entered their appearance through their respective advocates and claim statement of the I Party came to be filed on 31.05.2006 and counter statement of the II party on 18.08.2006.

3. After completion of the pleadings having regard to certain allegations made in the claim statement which were denied in the counter statement my learned predecessor while raising a Preliminary Issue as to

“Whether the Domestic Enquiry held against the I Party by II Party is Fair and proper”

after receiving the evidence of the Enquiry Officer and exhibiting charge sheet dated 06.02.2002 issued to the I Party; proceedings of the enquiry; written brief submitted by the Presenting Officer; written brief submitted by the Defence Representative and finding of the Enquiry Officer as Ex M-1 to Ex M-5 and the evidence of the I Party as WW 1 and hearing the arguments addressed by the learned advocates for both sides by order dated 04.11.2011 since the Preliminary Issue was held in the Negative i.e., the Domestic Enquiry held against the I Party by the II Party being not fair and proper an opportunity was given to the II Party to lead evidence to substantiate the charges levelled against the I party.

4. The learned advocate appearing for II Party while examining Sh. H Ranganath, Chief Manager, as MW 1 (M) got exhibited Photostat copies of loan application submitted by the I Party to the Sahakarnagar Co-operative Bank dated 06.11.1999; promissory note executed by the I party with two witnesses dated 14.11.1999; personal loan agreement executed by the I party towards Sahakara Nagara Credit Co-operative Society Limited dated 14.11.1999; undertaking letter given by the I party to the Bharat Co-operative Bank Limited dated 08.11.1999; letter of Bharat Co-operative Bank Limited sanctioning of loan dated 08.11.1999; irrevocable letter given by the I party dated 14.11.1999; letter alleged to have been issued by the SBI, ADB Branch, Doddaballapur dated 21.10.2000 which is said to be forged one; salary slip alleged to have been issued by the bank dated 24.10.2000 which is also said to be forged one; SBI cheques bearing no. 422457 and 422458 of Rs. 10,645.00 and Rs. 15,000.00 dated 19.06.2001 and 05.12.2001 respectively issued by the I party; a note given by Deputy Manager Accounts to Branch manager dated 16.07.2001; letter addressed by the Assistant General Manager, Zonal Office, Bangalore to the Branch manager dated 16.07.2001; Two Letters of AGM to the Branch manager dated 16.08.2001 and 22.11.2001; Two letter of AGM addressed to I Party dated 21.08.2001 and 10.02.2002 to regularize the account; letter of Bharat Co-operative

Bank to Manager, SBI, Doddaballapur Branch dated 13.06.2001 requesting for recovery of loan instalment; Reply of Branch Manager, SBI to Bharat Co-operative Bank dated 20.06.2001; four letters correspondence addressed by the Branch Manager to the AGM with regards to the illegality committed by the I party dated 20.06.2001, 04.07.2001, 17.07.2001 and 31.12.2001 as Ex M-1 (m) to Ex M-15(m) and Sh. Lakshman Rao as MW 2 (M) got exhibited Photostat copies of the sanctioned letter No. PER2445 dated 27.08.1991 conveying the sanction of housing loan by SBI, Zonal Office, Bangalore to Kolar Branch; copy of Sale Deed dated 23.12.1987 in respect of site purchased by I party; Encumbrance Certificate dated 23.12.1987 pertaining to the said site purchased by the I party; application for Second housing loan dated 05.07.1996 of I party; letter of I party dated 20.07.1996 seeking release of Rs. 90,000 from Housing Loan; sanction letter No. PER2946 dated 18.07.1996 conveying the sanction of Rs. 90,000 by Zonal Office, Bangalore; third additional housing loan application form of I party dated 03.01.2000; sanction letter No. PERHR870/6 dated 29.02.2000 conveying of sanction of additional housing loan of Rs. 1,50,000.00; letter of I party dated 28.08.1991 requesting for release of Rs. 50,000.00; letter of I party dated 20.07.1996 for release of Rs. 90,000.00; sanction of additional housing loan of Rs. 90,000 by Zonal Office, Bangalore vide letter PER 2946 dated 18.07.1996; letter of I party dated 30.03.2000 seeking release of Rs. 1,35,000.00 from the additional loan sanctioned on which there is noting of Branch Manager directing to release Rs. 35,000.00 and balance of Rs. 1,00,000.00 after inspection; Draft in favour of I party for Rs. 35,000.00 dated 30.03.2000; Draft in favour of I party for Rs. 90,000.00 dated 20.07.1996 by crediting to his account; Extract of House Tax Assessment made by CMC, Malur dated 24.06.2002; Agreement of Sale between I party and Saira Bi entered on 20.03.1996; letter addressed by MW 2 to AGM, Region-II, Zonal Office, Bangalore bearing No. AGM2/13/59 dated 27.04.2000; letter addressed by the Branch Manager, Kolar Branch to AGM2/22 dated 12.04.2000 conveying release of Rs. 35,000.00 to the I Party; note put up by MW 2 dated 04.04.2000 to the controller/ AGM-2 and the Branch Manager detailing the fact revealed in the inspection; Inspection Report dated 04.04.2000 conducted by MW 2 ; EC dated 24.06.2002 issued by Sub-Registrar, Malur; EC dated 18.06.2002 issued by Sub-Registrar, Malur; certified copy of the sale deed executed by I Party on 24.05.1997 in favour of Saira Bi; term loan agreement executed by I party dated 28.08.1991; letter of authority from I party for deduction of installment from salary dated 28.08.1991; letter by nominee of the I party to the Trustees of SBI dated 28.08.1991; confirmation of equitable mortgage dated 28.11.1991; Memorandum of Term Loan agreement for housing loan granted to staff under commercial rate of interest executed by I party on 20.07.1996; Memorandum of Term Loan for additional housing loan dated 30.03.2000 executed by I party; extract

of term loan ledger relating to house loan advance to I Party; extract of additional housing loan account for Rs. 90,000.00 No. HL3/29; extract of Additional Housing loan Account No. 01517/012812/00 dated 30.03.2000 as Ex. M-16(m) to Ex M-39(m). Interalia, the learned advocate appearing for I party examined him as WW 1 (M). After close of evidence of both sides when the matter was posted for arguments the learned advocate appearing for I party filed his written arguments, whereas, the learned advocate appearing for the II party addressed his oral arguments.

5. Since the charges levelled against the I Party were that he while working at Doddaballapur Branch of the II Party availed at its Kolar Branch a Housing Loan of Rs. 1,50,000.00 on 28.08.1991 and secured that loan by depositing the title deeds of site on 18.11.1991 and later behind the back of the bank entered into an agreement with Smt. Sabira Bi on 20.03.1996 to sell that mortgage property and further concealing the same applying for a second housing loan for construction on the same property on 20.07.1996 and getting it sanctioned behind the back of the bank he sold the mortgaged property on 24.05.1997 to Smt. Sabira Bi and again concealing the same misrepresenting the facts he got sanctioned third loan for construction of second floor to the tune of Rs. 1,50,000.00 on 30.03.2000 and availed part of it to the tune of Rs. 35,000.00 and secondly without obtaining administrative clearance he availed a loan from Bharat Co-operative Bank Limited, New Town, Yelahanka Branch, Bangalore by submitting a forged letter dated 31.10.2000 purportedly issued by its Doddaballapur Branch undertaking to remit Rs. 2,000.00 out of his salary towards its repayment and also submitted to that bank forged salary slip dated 24.10.2000 for obtaining that loan and thirdly he became a defaulter with SBI Card to the extent of Rs. 21408.24 paise as per communication of that bank and lastly he issued cheques bearing Nos. 422457, 422458 for Rs. 10,645.00 dated 19.06.2001 and Rs. 15,000.00 dated 05.12.2001 respectively in favour of Saharakarnagar Credit Co-operative Society Limited, Bangalore towards credit facilities availed by him without obtaining Administrative clearance and he had unauthorisedly branded the Doddaballapur ADB branch Rubber Stamp on those cheque leaves which were issued infact by Hoskote ADB Branch and thereby committed major misconduct as per para 521 of Sastry Award read in conjunction with Para 18.28 of Desai Award and VI Bipartite Agreement and as it is not in dispute in other words admitted by I Party that being a native of Malur in Kolar District in the year 1987 he purchased a site bearing Katha No.3130/32 measuring 30 x 30 ft. copy of sale deed of which is produced at Ex M-17 and while serving at Chennai he applied for housing loan for construction of house on this site and got sanctioned

loan of Rs. 1,50,000.00 on 27.08.1991 on condition to execute the equitable mortgage on the site purchased by him and after sanction of the loan he deposited the Original Sale Deed of that site along with extract of assessment register and encumbrance certificate and constructed the house on the ground floor as per the sanctioned plan and in the year 1996 he applied for additional loan of Rs. 1,50,000.00 for construction of the first floor and on that application the bank sanctioned Rs. 90,000.00 and he constructed the first floor and again in the year 2000 he applied for further additional loan of Rs. 1,50,000.00 and the bank sanctioned the same and he got released Rs. 35,000.00 as well as availing loan with Bharat Co-operative Bank Limited, New Town Yelahanka Branch, Bangalore on 08.11.2000. The points that arises for my consideration are :

Point No. 1 : Whether II Party proves the I Party who had availed housing loan for construction of house on the site purchased by him at Malur in Kolar District bearing No. 3130/32 measuring 40 x 30 ft. by deposit of title deeds behind the back of the bank he entered into an agreement to sell the said property in favour of Smt. Sabira Bi on 20.03.1996 and also sold it in her favour through sale deed dated 24.05.1997 and thereby committed a major misconduct?

Point No. 2 : Whether II party proves that I Party had availed loan from the Bharat Co-operative Bank Limited, New Town Yelahanka Branch, Bangalore on 08.11.2000 without obtaining administrative clearance furnishing forged letter to that bank dated 31.10.2000 purportedly issued by its Doddaballapur Branch undertaking to remit Rs. 2,000.00 out of his salary towards its repayment and forged salary slip dated 24.10.2000 and thereby committed a major misconduct?

Point No. 3 : Whether II Party proves I Party having issued two cheques bearing No. 422457 and 422458 which were infact issued by Hoskote ADB Branch unauthorisedly branding them with rubber stamp of Doddaballapur ADB Branch on 19.06.2001 and 05.12.2001 respectively in favour of Saharakarnagar Credit Co-operative Society Limited, Bangalore towards credit facilities availed by him without obtaining administrative clearance and thereby committed a major misconduct?

Point No. 4 : Whether II party proves that I Party having become defaulter with SBI Cards to the extent of Rs. 21,408.24 paise and thereby committed a major misconduct?

Point No. 5 : What Order/Award ?

6. **Point No. 1 :** As already adverted to by me above there being no dispute the I Party while working at Doddaballapur Branch of the II Party availed at its Kolar Branch a housing loan of Rs. 1,50,000.00 on 28.08.1991

and secured that loan by depositing the title deed of the site on 18.11.1991 as well as availing of second housing loan of Rs. 90,000.00 for construction of the first floor of the same property on 20.07.1996 and also getting sanctioned third loan of Rs. 1,50,000.00 on 30.03.2000 and availing part of it of Rs. 35,000.00 as well as executing sale deed in favour of Smt. Sabira Bi in the year 1996 the copy of which is produced at Ex M-36(m) and he has come out with version in the cross-examination that the title deeds of which he has mortgaged to secure the loan and the property that he has sold to Smt. Sabira Bi are two different sites that he had purchased in C Srinivasa Layout of Malur now it has to be seen whether those two properties are different properties as contended by him. It is admitted by I Party that exhibit Ex M-17(m) is the copy of the sale deed which was deposited by him by way of deposit of title deeds and Ex M-36(m) being the copy of the sale deed executed by him in favour of Smt. Sabira Bi dated 24.05.1997, these two documents throw light as to whether the property secured by way of depositing title deeds to secure the housing loan and the property that he sold to Smt. Sabira Bi are different or one and the same. As per Ex M-17(m) the copy of the sale deed in favour of the I party i.e. deposited as title deed with the bank to secure the housing loan is Municipal Katha No. 3130/32 measuring 40 x 30 East – West, 30 ft. North – south bounded by East Road, by West Site No. 21, by North Road and, by South Site No. 33, whereas, as per the description of property in Ex M-36 (m) sale deed executed by I Party in favour of Smt. Sabira Bi dated 24.05.1997 it is also Municipal Katha No. 3130/32, New Katha No. 3194/3000 measuring 40 x 30 East – West, 30 ft. North – south bounded by East Road, by West Site No. 21 by North Road and, by South Site No. 33. The only difference of the property description that we can find from Ex M-17(m) and Ex M-36(m) is that in the Ex M-17(m) the description of the constructed portion on the site that appears in Ex M-36 (m) is absent and in Ex M-36(m) in addition to the Municipal Katha No. 3130/32 that is appearing in Ex M-17(m) the New Number given by the Municipality is also described. Therefore, the version of the I Party that they are two distinct and different properties is far from truth. If at all the I Party as he has come out in his cross-examination had purchased two sites in C Srinivasa Layout both measuring 40 x 30 ft. bearing No. 3130/32 and 3100/92 he ought to have produced the copy of the sale deed relating to property bearing No. 3100/92 and demonstrate that that property has been sold by him to Smt. Sabira Bi and not site No. 3130/32 that is mortgaged by him to secure the housing loan availed by him by mortgaging title deed in favour of the Bank. Therefore, the version of the bank the property that is mortgaged by way of deposit of title deeds in its favour to secure the housing loan as well as the property sold by I Party to Smt. Sabira Bi through Sale Deed dated 24.05.1997 are one and the same and his version that they are two different properties is far from truth. Therefore,

without any hesitation I have arrived at conclusion of answering Point No. 1 in the Affirmative.

7. Point No. 2 : As already adverted to by me above the I party has not disputed and specifically admitted in his cross-examination that on 08.11.1999 he had taken loan of Rs. 50,000.00 from Bharat Co-operative Bank, Jayanagar Branch, Bangalore and that Ex M-4, Ex M-5 and Ex M-6 which are the undertaking letter given by the IP arty to the Bharat Co-operative Bank Limited dated 08.11.1999, letter of Bharat Co-operative Bank Limited sanctioning of loan dated 08.11.1999, irrevocable letter given by the I party dated 14.11.1999 relating to that loan. Therefore the I party availing a loan of Rs. 50,000.00 from Bharat Co-operative Bank, Jayanagar Branch is proved. But the management/ II Party failed to place on record any material that its employees while availing loan from other financial institutions has to take administrative clearance from the management as well as letter given to that bank purportedly issued by its Doddaballapur Branch undertaking to remit Rs. 2,000.00 towards its repayment and salary slip dated 24.10.2000 which are at Ex M-7(m) and Ex M-8(m) being forged except the bald statement in the affidavit of MW 1 (M). Under the circumstances, I arrived at conclusion of answering this point in the Negative.

8. Point No. 3 : As already adverted to by me above the I party who has unequivocally admitted having availed loan of Rs. 50,000.00 from Sahakarnagar Credit Co-operative Society Limited in the year 1996 while he was working at Hoskote Branch and had given two cheques one of Rs. 10,645.00 and another for Rs. 15,000.00 dated 19.06.2001 and 05.12.2001 respectively and they came to be dishonoured the copies of those two cheques are produced at Ex M-9(m) series. According to the II Party those two cheques came to be dishonoured on the endorsement by the Doddaballapur Branch that those two cheques were not pertaining to their branch in respect of which they rely upon the endorsement of the Bank which is part of Ex M-9 (m) series wherein at Sl. No. 16 there is writing by hand “Cheque series does not pertain to our Branch”. Ofcourse on the top of the Cheques below printed portion State Bank of India separately in Hindi and English Language there is a Rubber Stamp Affixation reading as ‘Doddaballapur ADB Code – 5313’ but there is no indication on these two cheques they being issued by Hoskote Branch nor any evidence is placed on record the same being issued by Hoskote Branch and the seal Doddaballapur ADB Code – 5313 being manipulated by the I Party. Under these circumstances, I arrive at conclusion of answering this point in Negative.

9. Point No. 4 : The I Party having emphatically denied in the year 2000 he taking SBI Credit Card and drawing Rs. 21,408.00 from the said credit card and failing to re-credit the same and also expressed his ignorance in that relation Doddaballapur Branch of the II party having

received a letter, the heavy burden was on the second party management to establish this allegation. In this connection the II Party has produced documents at Ex M-11 (m) and Ex M-12(m) series which comprises of letter of the Assistant General Manager to the Chief/Branch Manager, Doddaballapur to instruct I Party to regularise his SBI Credit Card account dated 16.08.2001; letter addressed by the Assistant General Manager to the Branch Manager, SBI Doddaballapur Branch dated 22.12.2001 to ensure that the employee/I Party regularise his SBI Credit Card Account; copy of letter purported to have been addressed to the I Party by Branch Manager dated 21.08.2001 instructing to regularize his SBI credit card account; copy of another letter purported to have been addressed to the I Party by Branch Manager dated 10.12.2001 informing that they are examining the possibility of recovering the amount from the salary and allowances payable to him. But there is no evidence placed to satisfy the court/tribunal that these letters were served on the I Party or any concrete evidence I Party having taking SBI Credit Card or having become defaulter from any of the Branches of SBI which purported to have issued him card. Under the circumstances, I arrive at conclusion of answering this point in Negative.

10. Point No. 5 : In view of my finding on Point No. 1, 2, 3 and 4 only charge No. 1 stand proved which is described as (a) in the charge sheet but Charge No. 2, 3 and 4 which are described as (b), (c) and (d) in the charge sheet are not proved. Since it is proved the I Party who was an employee of the II Party availed at its Kolar Branch a Housing loan of Rs. 1,50,000 on 28.08.1991 and secured that loan by depositing the title deed of the site purchased by him bearing Malur Municipal Khata No. 3130/32 on 18.11.1991 and later behind the back of the bank entered into an agreement with Smt. Sabira Bi on 20.03.1996 to sell that mortgaged property and further concealing the same applied for a second housing loan of Rs. 90,000.00 for construction on the same property on 20.07.1996 and after executing a sale deed in respect of that property infavour of Smt. Sabira Bi on 24.05.1997 he got sanctioned third loan for construction of the second floor to the tune of Rs. 1,50,000.00 on 30.03.2000 and got released part of it to the tune Rs. 35,000.00 and thereby cheated the employer/II Party which amounts to a major misconduct the punishment of Dismissal from Service imposed by the Disciplinary Authority cannot be said to be disproportionate. In the result, I pass the following

ORDER

The reference is rejected holding that the action of management of State Bank of India is justified in dismissing Shri Kannaiah, Clerk-cum-typist from the services of the Bank w.e.f. 02.06.2004 and that he is not entitle for any

relief. However, it is made clear that the II Party bank is not entitle to recover the money paid to him by way of Interim Relief by virtue of the Order of this tribunal dated 06.07.2012.

(Typed by U D C to my dictation, corrected and signed by me on 2nd June, 2014)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1944.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 30/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/06/2014 को प्राप्त हुआ था।

[सं. एल-12011/28/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-2, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 12/06/2014.

[No. L-12011/28/2008 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI-110032

Present:- Shri Harbansh Kumar Saxena

ID No. 30/09

Sh. Darshan Lal Kothari

Versus

State Bank of India

AWARD

The Central Government in the Ministry of Labour vide notification No L-12011/28/2008-IR (B-I) dated 21.04.2009 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the action of the State Bank of India in disengaging Sri Darshan Lal Kothari from services w.e.f. 17.06.2006 without any notice and compensation under section 25 F, 25 G & 25 H of the ID Act, 1947, is legal and justified? To what relief the person concerned is entitled?”

On 28.04.2009 reference was received in this tribunal. Which was register as I.D No. 30/09 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 12.05.2009. Wherein he stated as follows:-

That he was employed on 03.01.95 to work in a staff canteen run by coordination committee work of messenger/ water boy was subsequently taken by management from workman temporarily.

Workman worked in 1995 for 270 days, in 1996 for 230 days in 2001 for 42 days and in 2002 for 60 days total work done by workman for 610 days.

Through Bank Branch Raipur Dehradun letter 22/ 429 dated 30.07.1997 was sent with reference to letter dated 31.07.1997 by assistant manager State Bank of India Dehradun in which name of Sh. Darshan Lal Kothari was recommended as he worked for 563 days.

Name of Sh. Darshan Lal Kothari was sent mentioning him as temporary employee in letter dated 29/ 1/2003 sent by Branch Manager to Assistant General Manager SBI, Dehradun.

In writ-petition 1242 / (S/S) of 2004 bank admitted that Sh. Darshan Lal Kothari work as messenger/water boy .

Sh. Darshan Lal Kothari continuously worked in Bank and in each year he worked for more than 240 days.

Defendant bank follows service conditions which are based on Bipartite agreements entered into between parties.

Bipartite agreements dated 27.10.1988 and 09.01.1991 for regularization of temporary employee are applicable according to which class C temporary employees. On the basis of which workman is entitled but higher Bank authorities paid no attention for regularization of workman.

Workman is entitled for regular appointment. Hence entitled for pay and allowances.

Bank has regularized Junior employees to workman which is against Bipartite agreement and scheme as well as Labour laws.

That workman Sh. Darshan Lal Kothari messenger / water boy has been terminated on 17.06.2006 without prior information and notice. Which is improper and illegal and in violation of provision of Section 25F, G and H of ID Act, 1947.

On the basis of aforesaid contents workman prayed that workman Sh. Darshan Lal Kothari be reinstated and regularized on the basis of bipartite agreement and bank scheme after setting aside termination order dated

17.06.2006 he be paid amount which are payable to workman of his category alongwith compensation and expenses of the case.

Against claim statement management filed following written statement:-

Preliminary Submissions

- I. That the present Industrial Dispute is not maintainable as there is no master and servant relationship between the parties. At the very outset it is submitted that Sh. Darshan Lal Kothari was never appointed in the Bank as per rule. The brief facts are that Sh. Darshan Lal Kothari was engaged by the Canteen run by Co-ordination Committee at the Raipur Branch, Dehradun and had worked on temporary basis with the said Staff Canteen. The Staff Canteen are run by local implementation committees and there was no relationship between the claimant and the Bank and hence no dispute under section 2(k) of the Industrial Dispute Act, 1947 could arise for adjudication before this Hon'ble Tribunal. The claimant had also been engaged on occasional basis with breaks at the Raipur Branch, Dehradun as a temporary messenger during the period 1994 to 1997 on daily wage basis.
- II. That the Bank submits that the claimant has not made the Staff Canteen as a party to the present dispute and as such the present reference may be rejected on the grounds of mis-joinder and non-joinder of necessary and proper parties.
- III. That the present dispute raised by the claimant has not been properly espoused in terms of the provisions of the Industrial Disputes Act, 1947. It is stated that it has not been mentioned as to when the last meeting of the Union was held and at what meeting it was decided by the majority of Union members as to espouse the claimant Sh. Darshan Lal Kothari.
- IV. That it has been held by the Hon'ble Supreme Court in State Bank of India Vs. State Bank of India Canteen Employees Union (Bengal Circle) reported in (2000) 5 SCC 531:

"We , therefore, hold that employees of the canteens which are run at various branches by the Local Implementation Committees as per the welfare scheme framed by SBI would not become employees of the Bank as the bank is not having any statutory or contractual obligation of obligation arising under the award to run such canteens."

Admittedly claimant in the present case was engaged "in the staff canteen run by Coordination Committee". It is submitted that as a matter of fact neither the Sastry Award nor the hand book on staff welfare activities provide

that it would be obligatory on the SBI to provide canteen facilities to its employees.

V. CASE OF THE CLAIMANT DO NOT FALLS IN THE PARAMETERS LAID DOWN BY THE SUPREME COURT:

It is relevant to consider that in the instant case:

- (i) There is no obligation, statutory or otherwise, to run the canteens by the banks.
- (ii) The Bank is not employing the canteen workers,
- (iii) The Bank is not supervising or controlling the work or the details regarding the canteen or its employees engaged by the Staff Committee,
- (iv) The Bank is not taking any disciplinary action or directing any canteen employee to do a particular work or for that purpose no scheme is laid down by the Bank.
- (v) Most important aspect is “the recruitment” by the Bank is to be made as per the statutory rules framed by it after giving proper advertisement, inviting application, clearing written test and/or interview. As against this, for appointing a canteen employee there are no rules framed by the Bank.

The claimant was engaged by Staff Committee on the basis of the requirement of the work. The concept of regularization therefore cannot be stretched against the Bank. Employees of Staff Committee are not employees of the Bank as there is no statutory or contractual obligation or obligation under Sastry award to run a canteen.

It has been held by the Hon'ble Supreme Court in State of Karnataka & ors. Vs. KGSD Canteen Employees Welfare Association & ors. Reported in 2006(1) SCALE 85:

“the state intended to run the canteen departmentally through a committee, but according to the state, the committee has a distinct and different existence or different entity than the Government.

In the present case the Staff Committee/LIC is separate and distinct from the Bank.

VI. DAILY WAGER NOT ENTITLED TO REGULARISATION:

Due to exigencies of circumstances and on account of urgent needs in the branches, the Bank used to take work from temporary employees, from time to time, as and when need arose, on daily wage basis.

In Mahendra L.Jain & Ors. Case reported in (2005) 1SCC 639 it has been categorically held:

“The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularization of their services. The answer thereto must be rendered in negative. Regularization

cannot be claimed as a matter of right..... All actions of the state must conform to the constitutional requirements. A daily-wager in absence of a statutory provision in this behalf would not be entitled to regularization.”

It is humbly submitted that the Bank is obliged to make appointments only in fulfillments of its constitutional obligation as laid down in Articles 14, 15 and 16 of the Constitution of India. As per the constitutional scheme, all eligible persons similarly situated must be given opportunity to apply for the receive considerations for appointments.

VII. That the Bank further submits that there is not obligation, statutory or otherwise to the run the canteen by the Bank. The Bank is not employing the Canteen workers, the bank is neither supervising nor controlling the work or the details regarding the canteen or its employees engaged by the staff committee. That the Bank is not taking any disciplinary action or directing any canteen employee to do a particular work. The recruitment by the Bank is to be made as per the statutory rules framed by it after giving proper advertisement, inviting application, clearing the written test and/or interview.

That as against this for appointment of a canteen employee there are no rules framed by the Bank.

VIII. SETTLEMENTS:

1. The Respondent Bank is a statutory Corporation incorporated and constituted under the State Bank of India Act 1955. It carried on inter alia the business of Banking. Due to exigencies of circumstances and on account of urgent needs in the branches, the Respondent Bank used to appoint temporary employees in subordinate cadre.
2. The all India State Bank of India Staff Federation espoused the cause of temporary employees who have put in less than 240 days of temporary service in the bank and requested the Bank to give a chance for absorption and temporary appointment to such temporary employees.
3. On 17.11.87 a settlement was arrived at between the All India SBI Staff Federation and the Respondent Bank, wherein it was agreed that those temporary employees who have worked for less than 240 days would be given a chance for permanent absorption in the bank in case they have put in temporary service in bank during the period 01.07.75 to 31.12.87. Clause 7 of the said settlement provided for preparing the panel of selected candidates of scale wages to be wait listed in the order of their respective categorization, (viz, A, B, C) and length of aggregate temporary service put in the Bank

- during the above referred period and the panels and the panels shall be valid up to December, 1991. In terms of the settlement, such temporary employees will be given a chance for being considered for permanent employment in the Bank's service against the vacancies likely to arise in 1987 to 1991.
4. On 16.07.88 a second settlement was arrived at, wherein modifications in the 1st Settlement were made thereby, qualifying service in cl. 7 was extended upto 31.07.87 and the period in cl. 1 was modified as 1992 instead of 1991.
 5. On 27.10.88, a third settlement was arrived at between the All India SBI Staff Federation the respondent bank, wherein, a chance for being considered for permanent appointment to those of the persons who were engaged at branches/offices on casual basis against leave/casual vacancies of messengers, cash collies, water boys and sweepers etc. were to be considered for permanent appointment against the vacancies likely to rise from 1988 to 1992.
 6. That on 9.01.91 a 4th settlement was arrived at whereby validity of panels extended upto 1994. It was further agreed that validity of panel of temporary employees shall lapse on 31.12.94. The settlement further stipulated that "the remaining candidates will have to claim whatsoever for being considered for permanent appointment in the Bank."
 7. In the year 1995, A strike notice was given by All India Staff Federation over a charter of demands raising inter-alia the issue of "Non-implementation of bipartite settlements in respect of absorption of temporary employees." That on 9.06.95, minutes of conciliation proceedings were recorded before the Regional Labour Commissioner, Hyderabad wherein it was mutually agreed that actual number of vacancies as on 31.12.94 should be identified and that for filing up such vacancies the panels should be kept alive upto 31st March, 1997.
 8. In terms of the aforesaid Conciliation proceedings, a 5th Settlement was arrived at on 30.07.96 between the All India SBI Staff Federation and the respondent bank incorporating the terms and conditions agreed to between the parties before the RLC, Hyderabad. It was further agreed that the modalities for filing up of vacancies would be decided on circle to circle basis depending upon the local requirement, in consultation with the Federations affiliate by Circle Management.
 9. Before expiry of the panel as on 31.03.97 the respondent Bank filled up all the vacancies identified upto 31.12.94 in terms of the Settlement dated 30.07.96. Thereafter the panel had lapsed. Copies of the Settlements are annexed hereto and marked as Annexure R-I (colly).
 10. It is humbly submitted that the settlements were effected to balance the expectation of temporary employees to be absorbed in permanent service as against the constitutional rights of all eligible persons, to be considered for employment every time vacancy arises. Thus, the rights of the existing temporary employees were crystallized in the settlements – there is no question therefore of any legitimate expectation or estoppel for neither of these can be superior to or improve upon contractual rights specially those arising out of an industrial settlement.
 11. That the temporary employees who were not appointed pursuant to the aforesaid settlements, filed number of writ petitions challenging the lapsing of the said settlements in the High Court of Judicature Andhra Pradesh at Hyderabad and in the High Court of Orissa at Cuttack.
 - a. By its order dated 5.5.98, the Hon'ble Division Bench of the A.P. High Court dismissed the said writ petitions by holding inter-alia as under:

"...we hold that writ is not maintainable and respondents /petitioners have to seek relief for their grievances in the appropriate forum under the provisions of the ID. Act and not by invoking the writ jurisdiction under Article 226 of the Constitution of India."
 - b. The aforesaid judgment of the A.P. High Court was challenged in the Hon'ble Supreme Court being SLP (c) No. 11886-888/98. By its order dated 10.08.98 the Hon'ble Supreme Court was pleased to dismiss the said SLP thereby confirming the aforesaid judgment of the A.P. High Court.
 - c. By its judgment dated 15.05.98, the Orissa High Court was pleased to dismiss similar writ petitions filed by temporary employees by holding.

"Irresistible conclusion, therefore is that after 31.03.97 the panel ceased to be operative.... there is no dispute about correctness of the minutes recorded. The decision was taken administratively and on the basis of the settlement arrived at. The currency of the arrangement made on the basis of the impugned decisions/settlements has come to an end on 31.03.97."
 - d. Being aggrieved by the aforesaid judgment of the Orissa High Court the temporary employees filed SLP (C) No. 9429/99 before the Hon'ble Supreme Court. By its order, the Hon'ble Supreme

Court was pleased to dismiss the said SLP thereby confirming the order passed by the Orissa High Court.

That without prejudice to the above the parawise reply of the claim statement is as under.

1. That the contents of Para-1 of the claim statement as stated are denied for want of knowledge. It is denied for want of knowledge whether the Union is registered or whether the Union has espoused the cause of the claimant.

2. That the contents of Para-2 of the claim statement in so far as they relate to matter of records are not disputed. It is a matter of record and has been admitted by the claimant itself that he was engaged by the SBI Staff Canteen. It is stated that the Canteens are run by Local Implementation Committees and are a sort of a welfare measure for the employees of the bank is not a service condition for the employees. It is wrong and denied for want of knowledge as to whether the claimant was engaged w.e.f 03.01.1995.

3. That the contents of Para-3 as stated are wrong and denied. It is submitted that the recruitment in the management bank is through the recruitment procedure and guidelines. The same provides for selection and interview besides certain minimum qualifications to be possessed by the person so recruited. It is submitted that the claimant was never appointed on regular basis with the management bank. The claimant had worked on occasional basis with breaks, as and when need arose at the Raipur Branch as temporary messenger during the period 1994 to 1997 on daily wage basis, at a mutually agreed rate.

4. That the contents of Para-4 as stated are wrong and vehemently denied. It is wrong and denied that the claimant has worked for the bank for 610 days alleged. It is submitted that the claimant was only engaged by the Staff Committee and was paid for the engagement by such committee. There exists/existed and no employer-employee relationship between the parties and hence the present reference may be rejected as such.

5. That the contents of Para -5 as stated are wrong and vehemently denied. It is wrong and denied that the claimant had worked for 418 days with the bank as alleged. The claimant had worked on occasional basis at the Raipur Branch during the period 1994 to 1997 as temporary messenger on daily wage basis.

6. That the contents of Para -6 are wrong and denied. The letters dated 21.07.1997 and 30.07.1997 as mentioned in the paragraph will not create any right in favour of the claimant. It is submitted that the union namely All India State Bank of India Staff Federation espoused the cause of the temporary employees who have put in less than 240 days of temporary service in the Bank and requested the Bank to give a chance for absorption and temporary appointment to such employees. That on 17.11.1987 a settlement was arrived at between the All India SBI Staff

Federation and the respondent Bank wherein it was agreed that those temporary employees who have worked for less than 240 days would be given a chance for permanent absorption in the bank in case they have put in temporary service in the Bank during the period 01.07.1975 to 31.12.1987. Clause 7 of the said settlement provided for preparing the panel of selected candidates of scale wages to be wait listed in the order of their respective categorization and length of aggregate temporary service put in the Bank during the above referred period and the panels shall be valid up to December, 1991. In terms of the settlements, such temporary employees will be given a chance for being considered for permanent employment in the Bank's service against the vacancies likely to arise in 1987 to 1991. That on 16.07.1988 a second settlement was arrived at wherein modifications in the 1st settlement were made thereby, qualification service in clause 7 was extended upto 31.07.1988 instead of 31.12.1987 and the period in clause I was modified as 1992 instead of 1991. That on 27.10.1988 a third settlement was arrived at between the All India SBI Staff Federation and respondent Bank, Wherein a chance for being considered for permanent appointment to those of the persons who were engaged at Branches /offices on casual basis against leave/casual vacancies of messengers, cash coolies, water boys and sweepers etc. were to be considered for permanent appointment against the vacancies likely to arise from 1988 to 1992. That on 09.01.1991 a 4th settlement was arrived at whereby validity of panels was extended up to 1994. It was further agreed that validity of panel of temporary employees shall lapse on 31.12.1994. The settlement further stipulated that the remaining candidates will have no claim whatsoever for being considered for permanent appointment in the Bank. That a 5th Settlement was arrived at on 30.07.96 between the All India SBI Staff Federation and the respondent bank incorporating the terms that actual number of vacancies as on 31.12.94 should be identified and that for filling up such vacancies the panels should be kept alive up to 31.03.1997. It was further agreed that the modalities for filling up of vacancies would be decided on circle to circle basis depending upon the local requirement, in consultant with the Federations affiliate by Circle Management. That before the expiry of the panel as on 31.03.1997 the respondent bank filled up all the vacancies identified upto 31.12.1994 in terms of the settlement dated 30.07.96. Thereafter the panel had lapsed.

7. That the contents of para -7 as stated are wrong and denied. The letter referred to in this paragraph would not create any right in favour of the claimant. No appointment could be made dehors the constitutional rights hence, the claimant could not claim an indefeasible right to employment.

8. That the contents of Para -8 insofar as they relate to matter of records are not disputed. It is pointed out that the Writ-Petition filed before the Hon'ble High Court, Uttranchal being matter of record is not disputed. The

claimant was engaged as a Messenger/Water Boy on occasional basis with breaks as temporary messenger on daily wage basis.

9. That the contents of Para-9 as stated are wrong and denied. It is wrong and denied that the claimant had worked for 240 days continuously in each calendar year as alleged.

10. That the contents of Para -10 in so far as they relate to matter of records. The Bipartite Settlement signed at the Industry Level being matter of record are not disputed. The bank had also entered into various settlements as referred to above with the union. That as per the said settlement had lapsed in the year 1997.

11. That the contents of Para -11 insofar as they relate to the provisions of the settlement dated 27.08.1988 and 09.01.1991 being matter of record are not disputed, however it is pointed out that the claimant is not entitled to the benefits, however of such settlement in view of the fact that the panel had elapsed on 31.03.1997. His claim petition is liable to be rejected.

12. That the contents of Para -13 as stated are wrong and denied. The averments have been made without any name/factual basis.

13. That the contents of P-13 as stated are wrong and denied. It is wrong and denied that the claimant is entitled to regularization of absorption as prayed for.

14. That the contents of Para-14 as stated are wrong and denied. It is wrong and denied that the claimant has worked regularly with the management bank of action of the management is unjust or amounts to unfair labour practice.

15. That the contents of para -15 are wrong and denied. It is wrong and denied that the service of the claimant was terminated by the Management w.e.f 17.06.2006. It is pointed out that since the claimant was not a regular employee of the management bank, no question of termination of service could arise. There has been no violation of provisions of Industrial Dispute Act, 1947 or Section 25 F, G and H as alleged.

16. That whatsoever has not been specifically admitted by the opposite party Bank is the preceding paras in reply of this claim petition be deemed to be not admitted and denied.

PRAYER

It is, therefore, most respectfully prayed that the present reference in totality of facts and circumstances of case as well as on law and facts answered in favour of the management bank and it be held that the claimant is not entitled to any relief and claim petition under reply may be ordered to be rejected with heavy cost.

Against written statement workman on 25.09.2009 filed rejoinder through which he reaffirmed the contents of the claim statement.

On the basis of aforesaid contents he prayed, he be reinstated with full back wages.

My Ld. Predecessor proceeded on the basis of questions of determination mentioned in schedule of reference. Hence not framed any issues.

On 16.08.2010 workman filed his affidavit in his evidence in support of his case mentioned in Claim statement.

His affidavit was tendered on 10.01.2011. He was cross-examined on same day.

His examination in chief and cross-examination is as follows:-

I tender in evidence my affidavit by way of examination in chief. It is signed by me at points A and B. The same is Ex. WW1/A. It be read as part of my statement in this case.

XXXX By Sh. Rajat Arora, A/R for the Management.

For the first time I was engaged by the management bank on 01.01.1995. I was disengaged from service by the bank on 17.06.2006.

Q. For how many days did you work with the management bank from 18.06.2005 to 17.06.2006 ?

Ans. I worked only for 60 days during the period.

I am not in possession of any appointment letter showing my employment with the management bank on 01.01.95. No appointment letter was given to me by the bank. The bank never advertised for any job for which I was engaged. I was engaged for doing work in the canteen but I was actually doing the job like a peon in the bank. It is wrong to suggest that the chart prepared by me is wrong and is only self serving and I never worked during the number of days mentioned in my affidavit in any year. I am not in possession of any document given to me by the management bank during my entire engagement which I claim that I had served the bank. I used to be paid by the bank through vouchers. Regular employees were paid in different manner than me. It is wrong to suggest that I was engaged only on need based and I was paid for during the days I was engaged by the bank and I have no case now against the bank.

In support of its case management filed affidavit of Srikrishan Sharma, Deputy Manager, State Bank of India, Raipur, Dehradun, Uttranchal, on 25.08.2011 is as follow:-

I. That the deponent is working as Deputy Manager with the management bank and as such is well conversant with facts and circumstances of the

- present case and is hence competent to depose to this affidavit.
- II. The deponent submits that there exists/existed no employer-employee relationship between the claimant Sh. Darshan Lal Kothari and the answering management. The deponent states that the claimant was engaged by the Staff Canteen run by Co-ordination Committee at the Raipur Branch and had worked on temporary basis with the said Staff Canteen. The deponent submits that the staff Canteen are run by local implementation committees and there was no relationship between the claimant and the management. The claimant had also been engaged on occasional basis with breaks at the Raipur Branch of the Bank as a temporary messenger during the period 1994 to 1997 on daily wage basis.
 - III. That the deponent further states that there is no obligation, statutory or otherwise to run the canteens by the Bank. The Bank is not employing the canteen workers, the bank is neither supervising nor controlling the work or the details regarding the Canteen or its employees engaged by the staff committee. That the Bank is not taking any disciplinary action or directing any canteen employee to do a particular work. The recruitment by the Bank is to be made as per the statutory rules framed by it after giving proper advertisement, inviting application, clearing the written test and /or interview. That as against this for appointment of a canteen employee there are no rules framed by the Bank.
 - IV. That the deponent states that the Bank is obliged to make appointments only in fulfillment of its constitutional obligations as laid down in Articles 14, 15 16 of the Constitution of India. As per the constitutional scheme, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments.
 - V. The deponent states that the Canteens are run by Local Implementation Committees and are a sort of a welfare for the employees of the bank. That providing of Canteen Facilities to the employees of the bank is not a service condition for the employees. The claimant had worked on occasional basis with breaks at the Raipur Branch of the Bank as a temporary messenger on daily wage basis.
 - VI. The deponent states that the recruitment in the management bank is through the recruitment procedure and guidelines. The same provides for selection and interview besides certain minimum qualifications to be possessed by the person so recruited. The claimant was never appointed on regular basis with the management bank.
 - VII. That the deponent states that the claimant was only engaged by the Staff Canteen Committee and was paid for the engagement by such committee. The claimant had worked on occasional basis at the Raipur Branch during the period 1994 to 1997 as temporary messenger on daily wage basis.
 - VIII. That the deponent states that the union namely All India State Bank of India Staff Federation espoused the cause of the temporary employees who have put in less than 240 days of temporary service in the Bank and requested the Bank to give a chance for absorption and temporary appointment to such temporary employees. That on 17.11.1987 a settlement was arrived at between the All India SBI Staff Federation and the respondent Bank wherein it was agreed that those temporary employees who have worked for less than 240 days would be given a chance for permanent absorption in the bank in case they have put in temporary service in the Bank during the period 01.07.1975 to 31.12.1987. Clause 7 of the said settlement provided for preparing the panel of selected candidate of scale wages to be wait listed in the order of their respective categorization and length of aggregate temporary service put in the Bank during the above referred period and the panels shall be valid up to December, 1991 . In terms of the settlement , such temporary employees will be given a chance for being considered for permanent employment in the Bank's service against the vacancies likely to arise in 1987 to 1991. That on 16.07.1998 a second settlement was arrived at wherein modifications in the 1st settlement were made thereby, qualifying service in clause 7 was extended upto 31.07.1988 instead of 31.12.1987 and the period in clause 1 was modified as 1992 instead of 1991. That on 27.10.1988 a third settlement was arrived at between the All India SBI Staff Federation and the respondent Bank, wherein a chance for being considered for permanent appointment to those of the persons who were engaged at branches/officer on casual basis against leave/casual vacancies of messengers, cash coolies , water boys and sweepers etc. were to be considered for permanent appointment against the vacancies likely to arise from 1988 to 1998 . That on 09.01.1991 a 4th settlement was arrived at whereby validity of panels was extended upto 1994. It was

further agreed that validity of panel of temporary employees shall lapse on 31.12.1994. The settlement further stipulated that the remaining candidates will have no claim whatsoever for being considered for permanent appointment in the Bank. That a 5th Settlement was arrived at on 30.07.96 between the All India SBI Staff Federation and the respondent bank incorporating the terms that actual number of vacancies as on 31.12.94 should be identified and that for filing up such vacancies the panels should be kept alive upto 31.03.1997. It was further agreed that the modalities for filing up of vacancies would be decided on circle to circle basis depending upon the local requirement, in consultation with the Federation affiliate by Circle Management. That before the expiry of the panel as on 31.03.1997 the respondent bank filled up all the vacancies identified upto 31.12.1994 in terms of the settlement dated 30.07.94 in terms of the settlement dated 30.07.96. Thereafter the panel had lapsed. The copies of the settlement are annexed to this affidavit and may be read as part of this affidavit and be Exhibited as MW 1/1 to MW 1/5.

- IX. That the deponent states that the claimant had not worked for 240 days continuously in each calendar year and thus is not entitled to any relief.

Affidavit tendered on 10.12.12. MW1 Sh. Krishan Sharma was cross-examined by Ld. A/R for workman.

His examination-in-chief and cross-examination is as follows:-

I tender in evidence my affidavit which is Ex. MW1/ A. It bears my signatures my point A & B . I also rely on documents Ex. MW1/1 to MW 1/5.

XXXXX by Sh. Ajay Gupta, A/R for the workman.

It is correct that Sh. Darshan Lal Kothari had worked during my tenure. It is correct that Ex. MW1/W1 to W4 are the documents of the bank which I admit.

It is correct that claimant Sh. Darshan Lal Kothari had worked for 270 days in the year 1995 and 230 days in the year 1996.

It is correct that I have knowledge that the name of the workman was also recommended for considered of temporary messenger.

It is incorrect to suggest that the claimant Sh. Darshan Lal Kothari worked continuously from 3 Jan., 1995 to 17 June, 2006.

It is correct that no notice or compensation was paid to the claimant before his disengagement . Since vol. He was not the employee of the bank.

It is wrong to suggest forcibly giving back break to the claimant in order to deprive him of his chance to get regularized.

I was working at the Raipur branch from 30th June, 2010 to 9th June 2012.

It is incorrect to suggest I have wrongly mentioned that the claimant was working as a canteen boy in my affidavit.

It is incorrect to suggest that my affidavit is incorrect and false.

Ld. A/R's for the parties orally argued. Workman also filed written arguments on 01.10.2013 which is introduced on record.

Ld. A/R for the workman stressed that workman worked for about 12 years as messenger/water boy. Thus workman work more than 240 days but his services were terminated on 17.06.2006 without prior notice. Hence there is violation of provision of Section 25 F ID Act, 1947 etc. Hence he is entitled for reinstatement with full back wages etc.

While on the otherhand Ld. A/R for the management replied that workman has not work for 240 day in a year when his services were terminated on 17.06.2006 . He only worked for 60 day prior to 17.06.2006 . Hence he is entitled to no relief.

In the light of contentions and counter contentions of Ld. A/R's of parties I perused the pleadings of claim statement , written statement and rejoinder , written arguments of workman as well as evidence of the parties, principle laid down in the cited rulings and settled law of Hon'ble Supreme Court as well as of Hon'ble High court of Utrakhnad at Nainital on the point when workman is required to work for 240 days in a calendar year.

It is relevant to mention here that my Ld. Predecessor in ID No. 220/1998 Babu Singh V/s ONGC and other passed award on 09.04.2008. Through which he dismissed the claim statement and hold that workman is not entitled to any relief because he has not filed any document to show that he has worked for 240 days prior to termination of his services. Workman filed writ petition No. 1878 of 2008 (M/S) in the Hon'ble High Court of Utrakhnad at Nainital which was allowed on 03.04.2014 by his Lord Ship of Hon'ble of High Court of Utrakhnad at Nainital and award passed by my Ld. Predecessor has been quashed. Matter has been remanded back for decision afresh. Parties were directed to appear on 26.05.2014 before this Tribunal.

While deciding the aforesaid writ-petition his lordship held that the settled position of law is that workman is not required to work for 240 days in each and every calendar year nor it is required that he should have

worked for 240 days in a year when his services are terminated. Rather, settled position of law is that workman should have work continuously for 240 days in any calendar year.

It is also relevant to mention here that workman in the instant case produce all possible evidence to show that he continuously work for 240 days in a calendar year, 1995. On the basis of which Branch Manager of concerned branch of SBI wrote letter to higher authorities for regularization of workman.

In addition to it management has not produce muster roll etc. to rebut the evidence of the workman that he has worked 240 days continuously in a calendar year, 1995 etc.

Hence following principle of Hon'ble Supreme Court laid down in case of H.D Singh V/s RBI (1985) 4 S.C.C. 201 shall be applicable:-

"Employer's failure to produce the attendance register to controvert the workman's claim as to number of days he had actually worked, will lead to an inference of the correctness of the workman's claim."

As well as settled law as reaffirmed by his lordship of Hon'ble High Court of Uttarakhand at Nainital shall apply in the instant case because there is unrebutted evidence of workman.

In addition to it aggrieved party of the instant case can seek remedy of writ-petition from Hon'ble High Court of Uttarakhand at Nainital. Hence principle laid down are reaffirmed by Hon'ble High Court of Uttarakhand at Nainital shall be binding on this tribunal.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

Workman in instant case rendered service as a casual worker as Messenger/water boy for more than 240 days to management. So, he is entitled for reinstatement with regularization of his services. Management is directed to reinstate workman Sh. Darshan Lal Kothari and regularized him as messenger/ water boy after expiry of period of limitation of available remedy against award but workman is not entitled for back wages as he has neither pleaded in his claim statement nor proved that he remained unemployed since his termination on 17.06.2006 upto the date of Award. This will meet the ends of justice.

Award is accordingly passed.

Dated:-04.06.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1945.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कुनकुन रेलवे कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट संदर्भ संख्या 45/2002 को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2014 को प्राप्त हुआ था।

[सं. एल-41012/85/2002-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 45/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Konkan Railway Corporation Ltd and their workmen, received by the Central Government on 11/06/2014.

[No. L-41012/85/2002 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE-560022

Dated : 3rd June 2014

Present : Shri S. N. NAVALGUND, Presiding Officer

C R No. 45/2002

I Party

II Party

Shri Rama Poojary,
S/o late Sri Marappa
Poojary, Kullanja House,
Madanthyar Post,
Belthangady Taluk,
Dakshina Kannada
Karnataka.

The Regional Railway Manager,
Konkan Railway
Corporation Limited,
Regional Office,
Near Railway Station, Shirwad,
Karwar - 581 306.

Appearances:

I Party : Shri N. J. Baliga, Advocate

II Party : Shri P. P. Hegde, Advocate

AWARD

1. The Central Government vide order No. L-41012/85/2002-IR(B-I) dated 19.08.2002 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14

of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the action of the management of Konkan Railway Corporation Ltd., Karwar in awarding major punishment of dismissal from service to Sri Rama Poojary, ex-welder for his unauthorised absence from duty is justified? If not, what relief the said workman is entitled?”

2. On receipt of the reference while registering it in C R 45/2002 when the notices were issued to both the sides, they entered their appearance through their respective advocates and I Party claim statement came to be filed on 25.11.2002 and the counter statement of the II Party on 04.10.2004.

3. After completion of the pleadings my learned predecessor having regard to the certain allegations made in the claim statement that the enquiry conducted was an eye wash without following the procedure while framing a Preliminary Issue as to

“Whether the Domestic Enquiry held against the I Party by II Party is Fair and proper?”

receiving the evidence adduced by both the sides by order dated 31.03.2008 held the Domestic Enquiry was fair and proper, the learned advocates appearing for both the sides filed their written arguments on merits.

4. Brief facts leading to the Domestic Enquiry and the Award may be stated as under :

5. The I Party who was appointed by the II party organisation on 02.04.1994 which is working on the basis of concept of build, operate and transfer policy when it came to its notice, he who had remained unauthorised absence since May 1997 and inadvertently the salary for the period from may 1997 to February 1998 was credited to his SB Account with SBI, Canacona Branch, on 19.03.1998 he was issued with notice to remit the money inadvertently remitted immediately and to explain as to why Disciplinary action should not be taken against him within one week and as it was not responded by him after issuing several warning letters to the address furnished by him as there was no response finally issued him notice dated 01.02.2000 calling upon him to report within 10 days from the date of notice since to that also there was no response he was issued with charge sheet as under :

“Charge Sheet

The undersigned proposed to hold an Enquiry against Shri Rama Poojary under Rule 10 of the Konkan Railway Servants. The substance of the imputations of misconduct or misbehaviour in respect of which the Enquiry is proposed to be held is set out in the enclosed

statement of Article of charge Annexure I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure – II). A list of documents by which and a list of witnesses by whom, the Articles of charge are proposed to be sustained are also enclosed (Annexure III & IV). Further copies of documents mentioned in the list of documents as per Annexure III are enclosed.

Shri Rama Poojary is hereby informed that if he so desires he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact _____ immediately, on receipt of this Memorandum.

Shri Rama Poojary is further informed that he may if he so desires take the assistance of a Konkan Railway Servants an Official of a KRCL Railway Trade Union (Who satisfies the requirements of the rule 10(6) of the Konkan Railway servants for inspecting the documents and assisting him in presenting his case before the Enquiry Authority in the event of an oral Enquiry being held. For this purpose he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant or Konkan Railway Trade Union Officials Shri Rama Poojary should obtain an undertaking from the nominees that he (they) is (Are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any, in which the nominee had already undertaken to assist and the undertaking should be furnished to the undersigned alongwith the nomination.

Shri Rama Poojary is hereby directed to submit the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not required to inspect any documents for the preparation of his defence, and, within ten days after completion of inspection of documents if he desires to inspect documents and also:

- (a) to state whether he wishes to be heard in person and
- (b) to furnish the names and addressee of the witnesses, if any, whom he wishes to call in support of his defence.

Shri Rama Poojary is informed that an enquiry will be held only in respect of these articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

Shri Rama Poojary is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in person before the enquiring authority or otherwise fails or refuses to comply with the provisions of Rule 10 of the KRCL Servants D & A Rules or the orders/directions issued in

pursuance of the said Rule, the enquiring authority may hold the enquiry exparte.

The Attention of Shri Rama Poojary is invited to Rule 20 of the KRCL Servants (Conduct) Rules, under which no KRCL servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings it will be presumed that Shri Rama Poojary is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the KRCL Service (Conduct) Rule.

The receipt of this Memorandum may be acknowledged.

Sd/-

GOPAL RAJU, SEN/G/KRCL/MAO”

6. The I party on receipt of the said charge sheet gave his reply to the effect that on receipt of a telegram message and telephone call by his parents on 10.04.1997 he left to his home on the same day and during journey he had symptoms of illness and by the time he became normal his father became bed ridden and expired in the month of January 1998 as he was the only person to look after his parents he had to observe religious functions and as his aged mother also fell sick by shock only about four months back he was able to contact his colleagues and at last when he contacted corporate office at Mumbai being informed no steps have been taken so far for his continued absence, his absence being neither wilful nor deliberate he be given opportunity to convince the authority regarding absence and also to conduct enquiry in his presence permitting him to rejoin the work. On receipt of this reply the second party initiated the Domestic Enquiry by appointing Sh. N F Shaikh, Section Engineer (Works), Karwar as Enquiry Officer. Then the Enquiry Officer securing the presence of the I Party observing the formalities of preliminary hearing while recording the answers of the CSE/I Party since he admitted having remained absent from 10.04.1997 and he failed to produce any evidence having applied for leave or taking permission to proceed to his native place closing the enquiry submitted his enquiry finding holding the charge as proved. Then the Disciplinary Authority while forwarding the copy of the enquiry report to the I Party affording him an opportunity of hearing imposed the impugned punishment by order dated 16.04.2001. Then the appeal preferred by the I party to the Chief Engineer after giving an opportunity of hearing came to be dismissed by order dated 10.09.2001 the I Party approached the ALC(C), Mangalore through his representation dated 08.04.2002 and as he submitted failure report dated 12.06.2002 the government made this reference for adjudication.

7. The I Party in his claim statement challenges the finding of the Enquiry Officer stating that he had explained his absence from 10.04.1997 by producing the Medical Certificate issued by the Doctor who treated him and that he had visited his native place on 10.04.1997 informing the higher officials by submitting the leave letter for grant of leave for two days on the ground that his father was ill and as simultaneously he also fell ill and was suffering from fever from 10.04.1997 he was under treatment for fever till 03.05.1997 and from 04.05.1997 to 03.05.2000 he was under treatment for Rabbits Dog bite and same being not taken into account by the Enquiry Officer his finding is perverse and consequently the punishment imposed by the Disciplinary Authority relying on such enquiry finding is not sustainable.

8. In view of the facts narrated by me above since the Domestic Enquiry conducted by the II Party against the I Party is held fair and proper the points that now arises for my consideration are :

Point No. 1 : Whether finding of the Enquiry Officer charge being proved is perverse necessitating the interference of this tribunal?

Point No. 2 : If not, whether the punishment imposed is disproportionate to the proved misconduct?

Point No. 3 : What Order/Award?

9. On appreciation of the evidence brought on record by both the sides in the Domestic Enquiry the pleadings made in this reference with the arguments put forward by the learned advocates appearing for both sides, my finding on Point No.1 and 2 are in the Negative and 3 is as per final order for the following reasons :

REASONS

10. There is no dispute the I Party having remained absent from duty from 10.04.1997 and inspite of it his salary being credited to his SB Account till the month of February 1998 and he having not reported there after inspite of issue of several warnings and ultimately to the charge sheet issued to him he gave his reply dated 03.05.2000 wherein he states that in view of telegram message and telephone call on 10.04.1997 he left to his native place without whispering that he left applying for two days leave as alleged in the claim statement which appears to be an afterthought and not supported by any evidence. In the Domestic Enquiry the I Party without examining any witnesses on his behalf just contended by producing two medical certificates one issued by an LAMS doctor of Madanthayar village and another issued by Medical officer, Primary health centre, Punjalkatte dated 03.05.1997 the death certificate of his father and few receipts regarding purchase of medicines. When admittedly the I Party

remained absent from 10.04.1997 and failed to produce any evidence having left to his native place on that day giving a two days leave letter as alleged in the claim statement which appears to be an afterthought his absence from 10.04.1997 till he was issued with charge sheet dated 12.04.2000 it is nothing but an unauthorised absence on mere production of medical certificates without examining the doctors to testify the genuineness of the certificates it is not possible to accept that he was not in a position to resume his duties or even to send a leave letter through post or someone. As per the medical certificate issued by the Medical officer, Primary Health Centre, Punjalkatte dated 03.05.1997 it is certified that I Party was under his treatment for Enteric Fever as out patient from 10.04.1997 to 03.05.1997 and that he was fit to resume his duties, whereas, according to the certificate issued by Dr. M C R Sampigethaya, a LAMS doctor of Madanthyar issued on 03.05.2000 it is certified that I Party had a mad dog bite on his left leg as such he was under his treatment from 04.05.1997 to 03.05.2000. The certificate of Dr. M C R Sampigethaya that I party was under his treatment for dog bite from 04.05.1997 to 03.05.2000 without producing any evidence in its support on his bald certificate it is hard to accept the certificate the I Party was being under his treatment from 04.05.1997 to 03.05.2000 almost for a period of three years for a dog bite. Since as already adverted to by me above the I party without applying for leave remained absent from 10.04.1997 till 12.04.2000 the date on which he was issued with a charge sheet almost for a period of 3 years, it may be said that he had practically abandoned the job. Therefore, I find no reason to term the finding of the Enquiry Officer as perverse. Accordingly, I arrive at conclusion of answer this Point in the Negative.

11. Point No. 2 : Since the I Party remained unauthorised absent from 10.04.1997 and did not care even to send a leave letter and withdrawn inadvertently credited salary till February 1998 and inspite of warning letters issued to him did not respond until he was issued with charge sheet dated 12.04.2000 for almost a period of three long years which in my opinion appears to be abandonment of job, a major misconduct for which the punishment of dismissal imposed by the Disciplinary Authority affirmed by the Appellate Authority cannot be termed as disproportionate. Accordingly, I also arrive at conclusion the punishment of dismissal imposed by the Disciplinary Authority is not disproportionate to the proved misconduct against the I party. Accordingly, this point is answered in the Negative.

12. Point No. 3 : In view of my finding on Point No. 1 and 2 the action of the management of Konkan Railway Corporation Limited in awarding major punishment of dismissal from service has to be held as justified and I Party is not entitle for any relief. In the result, I pass the following

ORDER

The reference is rejected holding that the action of the management of Konkan Railway Corporation Limited in awarding major punishment of dismissal from service to Sri Rama Poojary, Ex-welder for his unauthorised absence from duty is held as justified and I Party is not entitle for any relief.

(Typed by U D C to my dictation, corrected and signed by me on 3rd June, 2014).

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 3 जुलाई 2014

का.आ. 1946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 109/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/06/2014 को प्राप्त हुआ था।

[सं. एल-41012/184/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 1946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 109/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway, and their workmen, received by the Central Government on 06/06/2014.

[No. L-41012/184/2001 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT LUCKNOW

Present :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 109/2002

Ref. No. L-41012/184/2001-IR(B-I) dated: 30.05.2002

BETWEEN

Shri Ram Babu
S/o Sh. Badri Prasad
650, Kund Patha,
Nandpurva Jhansi (U.P.) – 284 001.

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 284 001.

AWARD

1. By order No. L-41012/184/2001-IR(B-I) dated: 30.05.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Ram Babu S/o Sh. Badri Prasad, 650, Kund Pada, Nand Purva, Distt. – Jhansi (U.P.) and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

“KYA MANDAL VANIJYA PRABANDHAK (KHAN-PAAN) MADHYA RAILWAY, JHANSI DWARA KARMKAAR SHRI RAM BABU ATMAJ SHRI BADRI PRASAD KO DINANK 30.9.1994 SE SEWA SE NISHKAASIT KARNA NAYAYOCHIT HAI? YADI NAHI TO SAMBANDHIT KIS ANUTOSH KA HAQDAAR HAI?”

3. The case of the workman, Ram Babu, in brief, is that he was engaged as daily rated casual labour w.e.f. 10.08.88 to discharge multi functional duties, including cooking, packing of food, cleaning of vassals and service of meals to passengers of trains including Shatabdi Express. The appointment was regular for performing regular and perennial work and for made for indefinite period till the attaining the age of superannuation. The workman was given Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 28.12.1992. It is submitted that the workman continued to work as such for approximately more than four years when all of sudden his services have terminated w.e.f. 30.09.1994 after serving a notice under Section 25 F of the I.D. Act, 1947. The management by the means of said notice retrenched the services of the workman after paying compensation of Rs. 6216. It has been alleged by the workman that while terminating/ retrenching the services of the management of the railway did not observed rule of last come first go, as there are several persons who were similarly situated and appointed with the workman viz. Phool Singh, Jamil Siddiqui, Ambika Prasad are still working as Khalasi at Jhansi Karkhana. It has also been alleged that the workman as engaged at catering unit, Jhansi (Base Kitchen) and the number of workman of Catering Unit, Jhansi (Base Kitchen) is more than 100, hence while terminating the services of the workmen, the condition contemplated under Section 25 N of the I.D. Act has not been followed. Accordingly, the workman has prayed that his termination/retrenchment

w.e.f. 30.09.1994 be set aside with consequential benefits, including full back wages.

4. The management of the central railway has filed its written statement; whereby has admitted the engagement of the workman as a daily rated casual labour along with other w.e.f. 10.07.1988 due to exigencies of service on introduction of ‘Shatabdi Express Train’ for the purpose of preparing and delivering food article and providing associated services to the passengers of Shatabdi Express. It is also admitted that the workman was given temporary status on 28.12.1992. It is submitted by the management that the workman was based at Catering Unit, Jhansi; but he was working exclusively for providing an associated services to the ‘Shatabdi Express Train’. It is further submitted that at no point of time the strength of the catering unit, Jhansi, even after including the catering staff of ‘Shatabdi Express, never had 100 or more, thus, the provisions of Section 25 N is not applicable in respect of the workman concerned. And accordingly, the termination of the workman under Section 25 F of the I.D. Act was just and legal. The management has denied this allegation of the workman that any of the juniors to the workman have been retained in service; and has submitted that all the similarly engaged, specifically for Shatabdi Express train were retrenched simultaneously under Section 25 F of the Act vide order dated 30.09.1994 after complying with the necessary formalities as required under Section 25 F of the Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. the workman has filed its rejoined reiterating the averments already made in the statement of claim.

6. The parties have filed documentary evidence in support their claim. The workman has examined himself whereas the management has examined Shri P.K. Pandey, DCM, Central Railway, Jhansi. The parties availed opportunity to cross-examining the witnesses of each other apart from putting oral submissions.

7. I have given my thoughtful consideration to the rival contentions of the rival parties and perused entire evidence in light thereof.

8. The authorized representative of the workman has contended that the action of the management in terminating the services of the workman under provisions of Section 25 F of the I.D. Act, 1947 is malicious and camouflage. He has also contended that the action of the management amounts to non-compliance of Section 25 N. The representative of the workman has argued that on acquiring temporary status, the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, hence, his termination without adhering to the said rules and principle of natural justice is illegal.

The workman has filed list of employees at Catering Unit Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit Jhansi was an 'Industrial Undertaking' under Section 25 K and he was entitled to protection and benefit under section 25 N. A copy of letter dated 28.12.92 is filed to show temporary status being granted to him and 20 other casual labours. Temporary status was granted to the workman w.e.f. 28.12.1992. The above letter dated 28.12.92 further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting the temporary status. Copy of notice under Section 25 F of the Act, terminating his services is also filed. Medical certificate is also filed to show his health in full conformity with the requirements of the services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14.7.94 in respect of proposal discharging of 21 Monthly Rated Casual Labours including the workman.

9. The management's authorized representative has pleaded that Railway Board imposed complete ban on the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with others casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. It is also submitted that on process of streamlining man power under the Man Power Planning', the workman & twenty others were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provisions of Section 25 F of the I.D. Act, 1947.

The management has filed a copy of chart indicating total strength (designation wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2.7.93, a copy of CPO (HQ) letter dated 19.8.93, a copy of letter dated 8.7.94 of Sr. Divisional Accounts Officer, Central Railway, Jhansi. A copy of official notice dated 28.9.94 regarding disengagement of the services of the workman and others, a copy of letter dated 28.09.94 by the DRM regarding his disengagement and of others.

10. Admittedly, the workman was engaged as daily rated casual labour w.e.f. 10.07.1988 and was granted Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 28.12.1992 and his services have been terminated w.e.f. 30.09.1994 after complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947 i.e. payment of retrenchment compensation of Rs. 6216. Aggrieved from termination of services the workman preferred an Original Application before the Central Administrative Tribunal, which was not entertained for the want of jurisdiction. Thereafter, the writ petition before Hon'ble High Court,

Allahabd, which directed the workman to raise an industrial dispute before appropriate Government and consequently the present industrial dispute was raised.

11. Coming to the submission by the authorized representative of the workman that the Section 25 F was applied maliciously and this provision was used as camouflage. The factum of appointment, acquiring of temporary status and termination with notice under Section 25 F required to be analyzed. The workman and others were engaged in Catering Unit of Jhansi to strengthen the working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners were retained in the unit and instead 14 of the senior were assigned work of Shatabdi Express. This fact remains uncontroverted. This further corroborate the plea of the workman that he and others were the employees of the catering unit Jhansi and not of any separate unit in the name of Shatabdi Express unit; as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement was made by the competent authority. The management has not disputed legality of the appointment, grant of temporary status to them except stating non-obtaining of approval of the General Manager and justified the retrenchment of the workman on plea of surplusage of staff.

12. Here it is necessary to refer the few lines of the notice of retrenchment dated 30.09.94; wherein it is specifically mentioned as under:

"aapki sewaon ki aavakshyata nahi hone ke karan aapki sewaon ko etaddwara tatkaal prabhav se samapt ki jaati hai"

The natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. To substantiate the above fact, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts; first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30.09.94. A glance over this chart indicates present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30.9.94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies the fact stated in the notice of retrenchment dated 30.09.94. The strength since increased by $(98-63) = 35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an afterthought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to the year of the retrenchment. Even if the explanation has been given

as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's witness Shri P.K. Pandey admitted staff strength to be 142 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under Section 25 F. The basis of notice under Section 25 F is, thus, rendered non-est, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20.07.94, in reference to the letter No. C/192/CL/117 DC dated 12/14.07.94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional commercial Manger (C). Thus, it is, fully proved that dispensation of the services of the workman, on ground of non availability of work was totally unjustified and Section 25 F was used as device to get rid of the workman and others. The management deliberately concealed letter No. C/192/CL/117 DC dated 12/14.07.94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

13. The management has taken plea that the engagement of the workman and others was without prior personal approval of the General Manager and so, the very appointments were illegal. Any copy of circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if not fraudulent may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This condition, in fresh engagement did not render the appointment of the workman, illegal, against the sanctioned strength. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative measure was to prevent abuse of engaging casual labours. This must be borne in mind that casual engagement connotes engagement without post. In the present case, the engagements was against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions cannot take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent

authority by adopting the due process. The taking of approval was the duty of the authorities and not of the workman. The workman cannot be punished if the approval was not sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway Management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated 02.07.93 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 07.06.84 circulated under office letter No. HPV/22513/R dated 09.08.84, 'no fresh, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. These irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter dated 19.08.93. Again Sr. DAO JHS vide letter dated 08.07.94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28.09.94. Mr. R.N. Srivastava, DCM (Catering) Jhansi submitted his note to ADRM/Sr. DPO/Sr. DCM for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the series of the workman and 20 others were dispensed with taking assistance of Section 25 F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further provided temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway Servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment no regular, his termination should have been preceded by a show cause notice.

14. Now it has to be considered as to whether Section 25 F applied at all in case of the workman? The workman claims that his retrenchment could be made under Section 25 N of the I.D. Act, 1947. The management in reply has contended that the management is not an 'Industrial Establishment' within the meaning of 25 L (a)(i) of the I.D. Act, 1947, as it is not Factory under sub-section (m) of Section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow:

- (m) "factory" means any premises including the precincts thereof
- (i) Whereon then or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working or were working on any day of preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of (the Mines Act, 1952 (35 of 1952) or (a mobile unit belonging to the armed forces of the Union, railway running shed or hostel, restaurant or eating palace).

(Explanation I – For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account)

(Explanation II – For the purposes of this clause, the mere than an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on n such premises or part thereof)

15. Taking advantage of the exception clause, it is submitted by the management that catering unit, in railway is not an 'industrial establishment'. The exception clause mention 'railway running shed or a hotel, a restaurant or eating place. The catering department comprising with several working units in Central Railway is to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit Jhansi for the year 1994 which shows the number of staff being 142. This fact is not controverted by evidence. The management witness, Shri P.K. Pandey who appeared for cross examination, admitted that number of working staff is 142. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. The factor is as to whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as 'manufacturing and so may be said a factory under Section 2 (m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undenably, the catering unit Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serve in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under Section 2(m) of the Factory Act, 1948.

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

18. Hence, in view of the discussions made hereinabove, it can be safely said that the provisions of Section 25 N of the Industrial Disputes Act, 1947 was not applied since the permission required by clause (b) of Section 25 N of the Act has not been complied with as the prior permission of the appropriate Government has not been taken. There is no document on record to show that application was moved by the employer, seeking permission of the appropriate Government; and permission was granted by the said Government. Thus, the workman was entitled to be dealt with the provisions under Section 25 N and not under Section 25 F of the Industrial Disputes Act, 1947. Hence, the retrenchment order under Section 25 F was illegal.

19. Thus, from the facts and circumstances of the case, I am of considered opinion that the action of the management of the Divisional Commercial Manager (Catering), Central Railway, Jhansi in terminating the services of the workman under Section 25 F of the Industrial Disputes Act, 1947 was neither legal nor justified; and accordingly, I come to the conclusion that the workman is entitled for reinstatement will full back wages and other consequential benefits, assuming that there existed no termination at any point of time within six weeks from the date of publication of this award in the gazette, failing he shall also be entitled for simple interest @ 6% per annum on arrears. The reference is answered accordingly.

20. Award as above.

LUCKNOW.

04th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

Mumbai, dated the 26th May, 2014.

का.आ. 1947.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुंबई के पंचाट (संदर्भ संख्या 92/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/42/2005-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 92/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/42/2005 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, MUMBAI****Present:**

K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/92 of 2005**EMPLOYERS IN RELATION TO THE
MANAGEMENT OF BANK OF MAHARASHTRA**

The Dy. General Manager
Bank of Maharashtra
Regional Office
Mahabank Bhavan
B-37, Wagle Industrial Estate
Thane-400 604.

AND

THEIR WORKMEN.

Shri S.J. Kamdi
C/o. Sukarya Jaru Kamdi
At Gothengnar
Taluka Shahpur
P.O. Khutghar
Distt. Thane.

APPEARANCES:

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate.

FOR THE WORKMAN : Mr. V.J. Amberkar, Advocate.

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/42/2005-IR (B-II), dated 18.07.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Bank of Maharashtra, Thane Region in discharging the services of Shri S.J. Kamdi, Ex-Sub-Staff, Shahapur Branch, Bank of Maharashtra vide order dated 16/11/1995 is just, proper and proportionate? If not, to what relief the workman is entitled to?”

2. The services of the workman herein were terminated by the management as he was found guilty for fraudulently withdrawing amount from the Account of a customer of the Bank from time to time. He had withdrawn total amount of Rs.13,700/- on seven occasions from 29/07/1991 to 03/11/1992. It is alleged that the account holder Shri B.N. Jogale made an oral complaint to the Branch Manager. On his complaint the management initiated inquiry against the workman. The workman in four instalments deposited Rs.15,055/- from 05/07/1993 to 16/08/1993 in the account of Shri Jogale. The charge-sheet was served on the workman. He submitted his reply thereto. The management examined their witnesses before the Inquiry Officer and in presence of the workman. The workman had appointed defence representative of his choice. He cross examined all the management witnesses. The workman also examined himself on oath. He also examined the account holder Mr. Jogale who deposed in his favour and contended that he is neighbour of the workman and whenever he was in need of money, he used to give withdrawal slip to the workman and workman used to withdraw the amount at his instance. He also stated that he handed over amount to the workman to deposit the same in his account.

3. In this respect while passing Part-I award, my Ld. Predecessor has observed that there is no written complaint of the affected account holder. There was also no police complaint filed against the workman. Furthermore my Ld. Predecessor was also influenced that the account holder has supported the defence of the workman that workman had withdrawn and deposited the amount at his instance. My Ld. Predecessor has arrived at the conclusion that there is no evidence on record to show that the workman is guilty of the alleged misconduct of fraudulently withdrawing the amount from the account of Shri B.N. Jogale by forging his signature. Therefore my Ld. Predecessor held that, though the inquiry was fair and proper, however the findings of the Inquiry Officer are

perverse and in the final order he has directed the first party to justify the punishment of termination.

4. In this respect I would like to point out that when findings of the I.O. were found perverse, that means the charges levelled against the workman were not proved. In this backdrop question of justifying the punishment of termination does not arise. After the said order the first party has examined a witness Mr. D.V. Sonje at Ex-34. The first party has tried to prove the letter of the workman dt. 08/06/1993 in which he has confessed to have withdrawn the amount from the account of Mr. B.N.Jogale.

5. In this respect I would like to point out that once issue is decided by my Ld. Predecessor and he declared that findings are perverse, this Tribunal cannot change the said verdict after adducing additional evidence as this Tribunal is not examining part-I award and findings therein which is the power of higher or Appellate Court. In the circumstances the argument advanced on behalf of the management is devoid of merit that there was confession of the workman. It was also submitted that the handwriting expert has proved that the signatures of the account holder Mr. Jogale were forged. The Ld. adv. for the first party submitted the fact is not disputed that these withdrawal slips were presented by the workman and amount was withdrawn by him. According to the Ld. adv. for the first party all these circumstances suffice the purpose to hold the workman guilty for the misconduct as such evidence is sufficient in departmental inquiry.

6. The Ld. adv. for the first party submitted that the standard of proof in departmental inquiry is not as high as in criminal cases wherein the guilt has to be proved beyond reasonable doubts. In departmental inquiry preponderance of probability suffices the purpose. All these arguments though is quite convincing, I am not sitting as an Appellate Court to change the findings in part-I award recorded by my Ld. Predecessor. Therefore the findings recorded by my Ld. Predecessor that the findings of the IO are perverse need no interference. In the circumstances as findings by which workman was held guilty for misconduct are held perverse, there is no alternative but to set aside the punishment of termination of services of the workman. The arguments advanced on behalf of the first party and the evidence led by them at the most can be used for the purpose of considering the point of back-wages.

7. In the light of the facts and circumstances discussed herein above, I am of the opinion that though the workman can be reinstated in service he is not entitled to any back-wages. Thus I proceed to pass the following order:

ORDER

- (i) The punishment of discharge from the services awarded by the management is hereby set aside.

- (ii) The management is directed to reinstate the workman without back-wages with continuity of service.

Date: 26.05.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1948.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 29/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 प्राप्त हुआ था।

[सं. एल-31011/15/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 29/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-31011/15/2008 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present:

K .B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/29 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman
Mumbai Port Trust
Port Bhavan, S.V. Marg
Ballard Estate
Mumbai-400 001.

AND

THEIR WORKMEN.

The General Secretary
Mb.P.T. Dock & General Employees Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon Mumbai-400 010.

APPEARANCES:

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate

FOR THE WORKMAN : Mr. J.H. Sawant, Advocate

Mumbai, dated the 5th May, 2014.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/15/2008-IR (B-II), dated 11.02.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust by imposing the punishment of compulsory retirement of Shri Abdul R. Shaikh is justified? What relief the concerned workman is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice the second party workman filed his Statement of Claim at Ex-6. According to him he was working with the first party since 1982 as Mazdoor and he is permanent workman. He was in need of money for some domestic work. Therefore one Shri Vilas Pawar posing himself as an agent of the Bank promised the second party that second party would be granted loan from Dena Bank. The second party relied upon him and signed the papers given by Shri Vilas Pawar. Subsequently it was revealed that Shri Vilas Pawar fabricated the documents and had taken disadvantage of ignorance and need of money of the second party. Because of fraudulent act of Shri Vilas Pawar, second party did not get any loan from the Bank. Instead of that the first party initiated disciplinary action against the second party on the basis of charge sheet dt. 03/01/2003 for the alleged violation of Regulation 1976. The second party denied the charges. The first party initiated inquiry against the workman in violation of Principles of Natural Justice. The inquiry Officer did not consider the evidence of the second party and the material placed on record. The findings of the IO are perverse. The IO was bias. They ignored to consider the fact that some other workmen were also deceived by such agents and they are retained in the service. No loss has been caused to first party. The second party has become victim of anti-social elements and deserves leniency. On the basis of perverse findings of the IO the first party imposed upon the second party the punishment of compulsory retirement w.e.f. 09/09/2004. The said punishment of compulsory retirement is grossly disproportionate to the gravity of the alleged misconduct. The second party has been subjected to injustice and lost his employment. Therefore he raised industrial dispute. As conciliation failed, on the report of ALC (C), Ministry of Labour & Employment has sent the reference to this

Tribunal. The workman therefore prays that the inquiry be declared unfair and improper and the findings of the IO be declared perverse. He also prays that the punishment of compulsory retirement be quashed and the first party be directed to reinstate him with full back wages and consequential benefits.

3. The first party resisted the statement of claim vide its written statement at Ex-7. According to them, they have received a report from FA & CAO, Mumbai Port Trust that workman Shri Abdul Rehman Ibrahim had applied for personal loan of Rs.1,00,000/- from Dena Bank, Fort Branch by submitting false and fabricated documents. Therefore the workman was placed under suspension w.e.f. 20/08/2002 for committing misconduct and violating Regulations 3 (IA) (i) (iv) and (xiii) of the MbPT Employees (Conduct) Regulations, 1976. Thereafter he was served with chargesheet dt. 03/01/2003. The workman submitted his explanation and denied the charges. Since his explanation was not satisfactory, departmental inquiry was initiated against him. Shir A. R. Rane, Retired Administrative Officer was appointed as Inquiry Officer and Shri V.V. Prabhu, Sr. Ex-Engineer was appointed as Presenting Officer. The inquiry was conducted by the IO in accordance with the Principles of Natural Justice. Fair and full opportunity was given to the workman to defend himself. An office bearer of union was his defence representative. The workman filed his reply to the charge-sheet. Copies of all the prosecution documents were given to the workman. They examined two witnesses. His defence representative cross examined them. The workman examined himself on oath. He was cross examined by the Presenting Officer. The workman had also submitted his written brief. Fair and proper opportunity was given to the workman to defend himself. After considering the documentary and oral evidence on record, the I.O. recorded his findings. They are based on oral and documentary evidence on record. The inquiry was fair and proper and findings of the I.O. are not perverse.

4. After receipt of the report of the Inquiry Officer the disciplinary authority issued show cause notice to the workman and he was given personal hearing. Thereafter the order of compulsory retirement was passed. The said action of the first party is legal and justified. The Appellate Authority and Reviewing Authority also upheld the action of the first party as legal and justified. Before imposing punishment the first party also examined past record of the workman and found that he had produced School Leaving Certificate of another person fraudulently by inserting his own name therein. He was involved in a theft case at Sewri Warehouse. He was found guilty of availing loan from several co-op credit societies without obtaining prior permission of the office. He had availed loan of Rs.50,000/- from Bombay Mercantile Bank by submitting manipulated documents and forging signatures of the MbPT Officers. In respect of the first case he was

awarded penalty of dismissal. Subsequently penalty was modified by the Chairman to reduction of pay by two stages for the period of two years with prejudice. In second case major penalty of reduction of pay by three stages for a period of two years with prejudice was awarded. In case no. 3 & 4 no action was taken as disciplinary action in similar fraud case of Dena Bank was in progress. As the inquiry was fair and proper, findings of the I.O. are not perverse and looking into the previous conduct and the penalties imposed on the workman, the disciplinary authority has imposed the punishment of compulsory retirement which is proportionate to the misconduct. Therefore they pray that the reference be dismissed with cost.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether inquiry is fair and proper?	Yes
2.	Whether the findings of Inquiry Officer are perverse?	No

REASONS

Issue No.1:-

6. In the case at hand it is alleged that inquiry conducted against the workman is not fair and proper. According to the workman the Inquiry Officer was bias and he violated the Principles of Natural Justice. In this respect it was pointed out on behalf of the first party that the averment in respect of biasness of Inquiry Officer and violation of Principles of Natural Justice are formal and vague. There is no specific averment as to how the I.O. was bias and in what way he violated the Principles of Natural Justice. In this respect the Id. adv. for the first party pointed out that after receipt of report of misconduct the workman was suspended and his explanation was called for. As his explanation was not satisfactory, charge was framed and inquiry was initiated against him. The copy of the charge-sheet was served on the workman. He submitted his reply thereto. The copies of all the prosecution documents were given to the workman. The Presenting Officer examined two witnesses. The defence representative of the workman who is office bearer of the union had cross examined both the witnesses. The defence representative examined the workman before the I.O. The Presenting Officer cross examined him and after giving full hearing and opportunity to the workman, I.O. held the workman guilty and submitted his report to the disciplinary authority. The Disciplinary Authority sent the copy of report and issued show cause notice to the workman. After giving him personal hearing disciplinary authority has passed the order and imposed the punishment of compulsory retirement. The Id. adv. for the first party

pointed out that the workman has admitted in his cross examination at Ex-14 the procedure followed by the inquiry Officer. He admitted that he received the charge-sheet. He has given reply thereto. He has admitted that office bearer of the union was his defence representative. He has also admitted that his defence representative had cross examined the witnesses of management. He has also admitted that his statement was also recorded in the inquiry proceeding and Presenting officer had cross examined him. He has also admitted that after concluding the inquiry opportunity was given to both the parties to file their written submissions. In the circumstances, the Id. adv. pointed out that no specific defect in the inquiry was pointed out on behalf of the second party. Therefore according to him the inquiry is fair and proper.

7. It is a fact that the second party has not pointed out any specific instance of violation of Principles of Natural Justice or biasness of the I.O. However the Id. adv. for the second party submitted that the I.O. was a retired Administrative Officer. Therefore he was not competent to be a I.O. to conduct the inquiry. In support of his argument the Id. ad. for the second party resorted to Orissa High Court ruling in Siba Kishor Patnaik V/s. Chief Engineer Paradip Port Trust (1992 Lab IC 1012). In that case a retired officer was appointed as I.O. The said order of appointment was challenged in writ petition saying that a retired officer is not an authority to be appointed as I.O. as required under the rules. The Hon'ble High Court upheld the contention and the appointment of opp no.2 as I.O. was quashed and the Port Trust was set at liberty to appoint an Inquiry Officer in accordance with the Regulations. In this respect I would like to point out that, in that case without submitting to the jurisdiction of the I.O. his appointment order was challenged before Hon'ble High Court. In the case at hand though the I.O. was a retired officer his appointment order was never questioned or challenged by the second party workman. On the other hand the second party workman had submitted to the jurisdiction of the I.O. and defended the charges against him. After concluding the inquiry, he cannot be allowed to challenge the jurisdiction of the I.O. saying that he was not competent to conduct the inquiry. Neither he alleged any enmity against the I.O. nor assigned any other reason of his biasness. On the other hand from the above referred procedure it is clear that the IO has followed the correct and proper procedure.

8. On the point Apex Court ruling can be resorted to Sur Enamel and Stamping Works Ltd. V/s. Their Workmen 1963 II LLJ 367 wherein the Hon'ble Apex Court laid down the following conditions for fair and proper domestic inquiry. They are:

- (1) The employee proceeded against has been informed clearly of the charges leveled against him.

- (2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges
- (3) The employee is given a fair opportunity to cross examine witnesses.
- (4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and
- (5) The inquiry officer records his findings with reasons for the same in his report.

9. I.O. has followed the procedure as per the guidelines given by the Hon'ble Apex Court. Hence I hold that the inquiry was fair and proper. Accordingly I decide this issue no.1 in the affirmative.

Issue no.2:-

10. The Id. adv. for the first party submitted that findings of the Inquiry Officer, which are based on the evidence on record and consistent thereto, cannot be called perverse. In this respect I would also like to point out that, the Tribunal is not sitting as an appellate court to scrutinize the findings which are prima facie based on the evidence on record. On the point Apex Court ruling can be resorted to in US State Road Transport Corporation & Ors V/s. Musais Ram & Ors. 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that;

“The Court does not sit in appeal over the findings of the IO. If the findings are based on uncontroverted material placed before the IO, it cannot be said that these findings are perverse.”

11. In short the findings of the Inquiry Officer herein are based on evidence before him. They are not contrary to the evidence on record and cannot be called perverse. Thus I hold that the findings of the IO are not perverse. Accordingly I decide this issue no.2 in the negative and proceed to pass the following order:

ORDER

- (i) The inquiry is held fair and proper.
- (ii) Findings of the Inquiry Officer are not perverse.
- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 05/05/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1949.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेन्नई

कंटेनर टर्मिनल लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-31011/03/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 40/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Chennai Container Terminal Ltd. and their workmen, received by the Central Government on 04/07/2014.

[No. L-31011/03/2012 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 20th June, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 40/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Container Terminal Ltd. and their workman)

BETWEEN

The General Secretary : 1st Party/Petitioner Union
The Madras Port Trust
Employees Union
SCC Anthony Pillai
Bhawan No. 34 (Old
No. 9), Second Line
Beach Chennai-600001

AND

The General Manager : 2nd Party/Respondent
Chennai Container Terminal
Ltd. Chennai Port Trust
Administrative Building
No. 1, Rajaji Salai,
Chennai-600013

Appearance:

For the 1st Party/Petitioner : M/s K. M. Ramesh,
Union Advocates

For the 2nd Party/ : M/s S. Ramasubramaniam
Respondent & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-33011/3/2012-IR(B-II) dated 09.07.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Chennai Container Terminal (Pvt.) Ltd. (CCTL (DP World), Chennai, Chennai Port Trust Administrative Building, Chennai in not terminating the appointment of Sri P. Gopi as “Yard Supervisor” and not reverting him back as Q.C. Operator as requested by him is legal and justified? What relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 40/2012 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively. After the counter statement was filed, the petitioner has filed rejoinder

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered union represented by its General Secretary. P.Gopi is a member of the Union and is the workman concerned in this dispute. He had joined the service of the Respondent as Checker in the year 2000 and was promoted as QC Operator in the year 2005. By order dated 01.07.2010, the concerned workman was promoted as Yard Supervisor of Operations Department in the Management Cadre w.e.f. 01.07.2010. Clause-6 of the order of promotion states that the concerned workman shall be on probation for a period of 6 months during which period himself or the Company may terminate the appointment by giving 15 days notice without assigning any reasons. The order of promotion was served on the concerned workman on 27.07.2010 and he joined the promoted post on the same date. Since he felt that he is not fit for the post of Yard Supervisor he met the General Manager on 02.08.2010 and requested him to revert him back as QC Operator. The General Manager refused to receive the letter of request. The concerned workman then sent a letter by Registered Post on 12.08.2010 seeking reversion. In the said letter the workman had terminated his appointment as Yard Supervisor and gave 15 days notice as stated in Clause-6 of the Appointment order. However, the Respondent did not respond to this letter.

On the other hand the probationary period of the concerned workman was extended by 6 months. At the same time the Respondent had reverted one Bharath who was also promoted as Yard Supervisor from the post of QC Operator, on his request. The refusal of the Respondent to accept the request of the concerned workman to revert him to the post of QC Operator is arbitrary, illegal and malafide and also amounts to unfair labour practice and victimization. The dispute is raised in the above circumstances. An order may be passed directing the Respondent to revert the concerned workman to the post of QC Operator.

4. The Respondent has filed Counter Statement contending as follows:

The dispute is not maintainable as Gopi, the concerned worker is not a workman as defined under Section-2(s) of the ID Act. The workman was working as a Yard Supervisor in the Management Cadre at the time when the dispute was raised. 35 numbers of direct and contractual employees are working under him. He is to personally supervise their work. The concerned employee who was then QC Operator had submitted his application to the post of Yard/Vessel Supervisor on the basis of the notification issued by the Respondent on 15.03.2010. He had attended the interview alongwith other applicants on 10.05.2010 and on the basis of the result of the interview he was promoted as Yard Supervisor in the Management Cadre. He was confirmed to this post on 21.07.2011. His salary was revised and he was receiving Rs. 23,167/- a month as salary. On 13.08.2010 the employee had written a letter requesting to demote him as QC Operator. As there was no policy to demote the employees the Respondent refused him to revert him to his previous position. By order dated 11.07.2011 the employee was transferred to CFS Supervisory Cadre and is now working as Container Freight Station Supervisor. The employee has accepted the promotion and has joined the promotion post. Though Bharath referred to in the Claim Statement was given promotion, he did not join as a Yard Supervisor. So the employee cannot compare himself with Bharath. The petitioner is not entitled to any relief.

5. In the rejoinder filed by the petitioner, petitioner has denied the averments in the Counter Statement and also reiterated the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M18.

7. The points for consideration are:

- (i) Whether the action of the Management in refusing to revert the concerned employee, Gopi to the post of QC Operator is legal and justified?
- (ii) What, if any, is the relief to which the concerned employee is entitled?

The Points

8. The facts of the case are not much in dispute. The Petitioner Union had raised the dispute on behalf of Gopi who had entered the service of the Respondent as a Checker, promoted as QC Operator and later promoted to the post of Yard Supervisor in the Management Cadre. After joining the post of Yard Supervisor and working as such for some time the concerned employee had felt that the post in the Management Cadre is not suitable to him. He wanted to be reverted to the post of QC Operator which the Management refused. According to the petitioner, this action of the Respondent is arbitrary and illegal. The dispute is raised claiming that the concerned employee is entitled to be reverted back to the post of QC Operator.

9. The Petitioner Union has requested the Respondent to revert the concerned employee back to the post of QC Operator by letter dated 12.07.2011 marked as Ext.W2. Though it is stated in the Claim Statement that on 02.08.2010 itself the concerned employee had requested the General Manager to revert him back to the post of QC Operator, apart from the oral version of the concerned employee, there is no other evidence regarding this. On 13.10.2010 he had written to the Respondent making such a request. This is produced by the Respondent and is marked as Ext.M13.

10. It has been pointed on behalf of the Respondent that it was on the basis of an application given by the concerned employee that he was considered for the post of Yard Supervisor and that he was given promotion after an interview. This fact is admitted by the employee examined as WW1 also. He has admitted that Ext.M10 is the application given by him to appoint him to the post of Yard/Vessel Supervisor. He further stated that he had applied for the post on his own volition. Ext.M11 is the copy of the letter calling him for interview for the above post. The witness had admitted that he has attended the interview, though he would state that during the interview he has stated that he does not require the post since the salary was lesser. If this was the case there was no necessity for him to attend the interview at all. Again, it could be seen from the Counter 'Statement that the salary to the post of Yard Supervisor was not less than that of QC Operator.

11. Ext.W1 is the order of promotion served on the concerned employee. As could be seen from the Claim Statement it is on the basis of Clause-6 of this order of promotion that the employee is claiming that he is entitled to be reverted to the post of QC Operator even as per the order of promotion. What is stated in the Claim Statement is that as per Clause-6 of the promotion order, during the probation period of 6 months the employee or the Company can terminate the appointment by giving 15 days notice. However, on going through Clause-6 of Ext.W1 it could be seen that this is not the case. What is stated in

Para-1 of Clause-6 of Ext.W1 regarding probation and termination is that the employee will be on probation for a period of 6 months during which period either the Company or the employee may terminate the appointment by giving 15 days notice without assigning any reasons. What is to be discerned from this is only that either the employer or the employee can terminate the employment itself by giving 15 days notice during the 6 months period of probation. It does not connote the meaning that the employee is liable to be reverted to his earlier post in case he gives notice of termination. The result of notice of termination as per the clause is that the person will cease to be an employee of the Respondent once the notice of termination is given.

12. It could be seen from the documents produced on behalf of the Respondent that it was not for the first time the concerned employee has been applying for appointment to the post of Officer. Ext.M8 is the application given by him for the post on 08.12.2006. Subsequently on 15.03.2010 an internal vacancy notification was issued by the Respondent inviting applications for the post of Yard/Vessel Supervisor, as seen from Ext.M9. The concerned employee responded to this notification and submitted the application again on 25.03.2010, as seen from Ext.M10. It was consequently, he was called for interview as per Ext.M11 and was given the order of promotion i.e. Ext.W1. Thus it could be seen that the concerned employee was aspiring for the post for a long time and it was on repeated effort that he obtained the post. Ext.W1 shows that the order of promotion dated 01.07.2010 was served on him on 27.07.2010. Even as seen from the Claim Statement he joined the post on the same day which would show that he was very much anxious to work in the promoted post. What exactly is the reason for the employee to think of going back to the post of QC Operator in the workman category is not known.

The Management is not willing to revert him back to the post of QC Operator. It is stated it is not the policy of the Management to revert a person in the normal course. Though the example of one Bharath is given as an instance of reversion, what is seen is that this person has not joined the promoted post even though he has received the order of promotion. So there was no question of his reversion also.

13. The counsel for the petitioner has referred to two precedents in support of his argument in favour of reversion of the concerned employee. In the decision in OM PRAKASH SUD VS. UNION OF INDIA AND ANOTHER reported in 2003 AIR SC 3833, the concerned employee had been working as Technical Assistant. On his attaining the qualification he was offered the post of Key Board Operator. He accepted the post on the condition that he should be allowed to revert to his original post and retire on reaching the age of 60 years and not in

the age of 58 years. The Management did not reply to his conditional acceptance. Order of retirement was served on him by the Management on his completing the age of 58 years. The Apex Court quashed the order of notice of retirement holding that the employee was always signing the register as Technical Assistant and he was paid the salary of Technical Assistant also even after the offer of appointment to the post of Key Board Operator, that he was never treated as Key Board Operator but all along he had been treated as Technical Assistant. The facts of the above case are totally different from the facts of the present case. There the offer of promotion was met by a conditional acceptance but the promotion was never given effect to and the person continued to work in his former post in which he could have worked upto the age of 60 years. So the above decision is not of any help to the petitioner.

14. Another decision cited by the counsel for the petitioner is **SATISH CHANDRAN VS. GENERAL MANAGER, UCO BANK AND OTHERS** reported in 2008 2 SCC 653. It was a case where the employee who was working as Clerk was promoted as Assistant Manager and was posted to a place not to his liking but wanted a reversion and the same was acceded to by the Management and he was relieved from the promoted post also. Subsequently, he made an application to permit him to withdraw the request for reversion which was not acceded to by the Management. The High Court had dismissed the Writ Petition filed by the employee who felt aggrieved. The facts of the case reveal that as per the Bipartite Settlement when an employee seeks reversion he can be allowed in which case he will be entitled to subsequent promotion only after two years. The request of the concerned employee for reversion was allowed on the basis of the Bipartite Settlement and his application to withdraw the request for reversion also seems to be on the basis of the Bipartite Settlement. The finding in the above case also is not of any help to the petitioner, the facts being not in *pari materia* to the facts of the present case.

15. There is no provision which entitles the concerned employee to revert himself back to the previous post at his whims and fancy once he is appointed to the particular post. The terms and conditions of the order of promotion does not entitle him to have such a choice. In so far as Management is not willing to accede to his request in spite of it being to be reverted to a lesser post the concerned employee has no choice but to continue in the post if he wants to stick to the service of the Respondent.

16. Apart from the contention on the merits of the case, the Respondent has also taken a contention that the dispute is not maintainable before this Tribunal since the petitioner was not a workman as defined in Section-2(s) of the ID Act at the time when the dispute was raised.

According to the counsel for the Respondent, the concerned employee had already accepted the post of Yard/Vessel Supervisor in the Management Cadre and was working in this post at the time when he raised the dispute. It has being argued by the counsel that the concerned employee not being a workman, this Tribunal is not the forum to redress his grievance.

17. The counsel for the petitioner has referred to the decision in **MANAGEMENT OF INDIAN BANK VS. INDUSTRIAL TRIBUNAL (CENTRAL GOVERNMENT) MADRAS AND ANOTHER** reported in 1977 1 LLJ 343 in support of his argument that in spite of the circumstances pointed out by the counsel for the Respondent the matter would come within the ambit of this Tribunal. The above was the case where certain Clerical Cadre Staff of Indian Bank were promoted as Officers but were denied the benefit of two additional increments which were given to the Officers who were not promoted from the Clerical Cadre Staff. A contention of the same kind raised in the present case that the concerned persons are in the Officer category and would not come under the category of workman as defined in Section-2(s) of the ID Act was raised by the Management. This objection was rejected by the Madras High Court stating that the expression “any person” occurring in Clause-(k) of Section-2 of ID Act would show that he need not be a workman at all. It was found that the person must be a person in whose conditions of employment, etc. the workers are directly or substantially interested. The Hon’ble High Court also observed that the Union is fighting for their own conditions of service which they would obtain when they are promoted as Officers and that the interest which they have in the determination of the conditions of service of the Officers is neither remote nor unsubstantial but direct and vital in view of the fact that a fixed percentage of higher posts has to go to them. In fact the above dictum laid down also will not help the petitioner. In the present case the Union is not fighting for the common cause. It is fighting for the individual interest of the concerned employee. It does not matter to the Union or other workers whether the concerned employee is reverted to his previous position or retained in the position in which he is only the particular individual is concerned with it.

18. It is not disputed by the petitioner that the concerned employee was working in the Management Cadre at the time when the dispute was raised. In the Claim Statement itself it is admitted that he was promoted to the post of Management Cadre and had joined the post and had worked in the capacity of Yard Supervisor. He is supervising several employees under him. So it is not by mere nomenclature that he is put in the Officer cadre. Thus the concerned employee was not a workman as defined in Section-2(s) of the ID Act at the time when the dispute was raised. So the dispute is not maintainable before this

tribunal also. So for this reason also the reference is to be answered against the petitioner.

19. In view of my above finding, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th June, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Gopi

For the 2nd Party/Management : MW1, Sri G. Nagarajan

Documents marked

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	01.07.2010	Copy of order of promotion issued to P. Gopi
Ex.W2	12.07.2011	Copy of petition from First Party to the Regional Labour Commissioner (Central), Chennai
Ex.W3	21.07.2011	Copy of letter from Second Party to P. Gopi
Ex.W4	08.08.2011	Copy of remarks/reply filed by the Second Party before the Regional Labour Commissioner (Central), Chennai
Ex.W5	02.09.2011	Copy of rejoinder filed by the First Party before the Regional Labour Commissioner (Central), Chennai
Ex.W6	xxxx	Copy of QC Operator Moves for the month of July 2012

On the Management's side :

Ex.No.	Date	Description
Ex.M1	17.10.2001	Appointment letter (Checker) issued to the Petitioner
Ex.M2	17.04.2002	Confirmation order issued to the petitioner
Ex.M3	14.07.2004	Application for QC submitted by the petitioner
Ex.M4	15.11.2005	Promotion order issued to the petitioner
Ex.M5	09.02.2006	Confirmation of services as QC Operator
Ex.M6	June 2006	Best QC Operator of the month Award
Ex.M7	08.12.2006	Application for Officer (Internal)

Ex.M8	17.01.2006	Medical Fitness Certificate
Ex.M9	15.03.2010	Internal Vacancy Notification
Ex.M10	25.03.2010	Application for the post of Yard/Vessel Supervisor
Ex.M11	10.05.2010	Call letter for interview for position of yard supervisor
Ex.M12	01.07.2010	Promotion as Yard Supervisor in management cadre (Officer)
Ex.M13	13.08.2010	Letter addressed to the HR Manager
Ex.M14	11.07.2011	Transfer Order
Ex.M15	21.07.2011	Confirmation letter as Yard Supervisor
Ex.M16	25.04.2012	Annual Compensation Revision
Ex.M17	-	Position description of Yard Supervisor
Ex.M18	14.11.2013	Personal Performance and Development Plan (Final Review-2014).

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 60/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12012/38/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/38/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 18th June, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 60/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman).

BETWEEN:

Sri M. Jayabalaganesan : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent
Indian Overseas Bank,
Central Office
662, Anna Salai
Chennai-600002

Appearance:

For the 1st Party/
Petitioner : M/s Balan Haridas,
R. Kamatchi Sundaresan,
Advocates

For the 2nd Party/
Management : M/s NGR Prasad, V. Stalin,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/38/2012-IR (B-II) dated 29.08.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Indian Overseas Bank in imposing the punishment of dismissal from service on Sri M. Jayabalaganesan, Ex-Cashier vide order dated 28.06.2011, is legal and justified? What relief the workman concerned is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 60/2012 and issued notices to both sides. Both sides entered appearance through their counsel and filed their claim and counter statement respectively. After the counter statement was filed, the petitioner filed a rejoinder.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent Bank as Sub-Staff and was promoted to the Clerical Cadre subsequently. He has been discharging his work sincerely and honestly. He has been working at Panagudi branch of the Respondent Bank from the year 2007. He was working as Cashier during 2010. While working in the branch the petitioner was placed under suspension on 29.05.2010. It was alleged by the

Respondent that the petitioner had received an amount of Rs. 12,000 to be remitted to the account of the Self Help Group of Roja Mahalir on 27.01.2010, but failed to account the same in the books of the branch and returned the amount to the concerned after a complaint was made on 12.02.2010 only. It was further alleged that on 17.02.2010 one Velayudham had remitted Rs. 20,850 into various SB Accounts, but the petitioner who was dealing with the same remitted Rs. 50 less in one of the accounts by showing remittance of Rs. 6,900 instead of Rs. 6,950. The Respondent issued a Charge Sheet to the petitioner for the misconducts alleged above, on 24.06.2010. In spite of explanation by the petitioner, a domestic enquiry was conducted and the petitioner was found guilty of the charges by the Enquiry Officer. The petitioner had not committed the misconducts alleged. On 27.02.2010 one Bamila had come to the branch to remit Rs. 12,000 to the loan account of Roja Mahalir Self Help Group. While handing over the amount she requested to remit the amount after verifying the loan account number. Because of heavy rush in the bank the petitioner was not able to verify the loan account number immediately. He kept the cash in the drawer and went for lunch. At the time of closing of cash, he could not verify the cash as there was cash shortage of Rs. 5,000/-. The petitioner was not able to locate the shortage and so he closed the cash account by borrowing from his colleague. In the meanwhile the petitioner forgot about the amount received from Bamila. On the next day also he forgot about the same. From 29.10.2010 he was on leave for 7 days as he was not doing well. After the petitioner came to know about the complaint given by Bamila he had remitted the amount. The petitioner had not misappropriated the amount as alleged by the Respondent. The mistake of accounting Rs. 50 less from the account of Velayudham did not come to light as there was no excess cash on 17.02.2010. The petitioner had not done anything with malafide intention. There was only one Cashier for remittance and also payment at Panagudi Branch. In spite of pressure of work the petitioner had been working satisfactorily without giving any room for complaint. The Disciplinary Authority imposed the punishment of dismissal from service on the petitioner on the basis of the report of the Enquiry Officer. The appeal filed by him has been dismissed by the Appellate Authority also. It is in such circumstance, the dispute has been raised by the petitioner. An order may be passed holding that the dismissal of the petitioner from service is illegal, and also directing the Respondent to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

While the petitioner was working as Cashier at Panagudi Branch, on 27.01.2010 one Bamila had remitted Rs. 12,000/- to the credit of the loan account of Roja

Mahalir Self Help Group. The amount was received by the petitioner. But the same was not accounted for in the books of the branch. When Animator of the SHG came to the branch after two days she found that the amount of Rs. 12,000 was not credited to the loan account. She contacted the petitioner and he returned the amount of Rs. 12,000 on 23.02.2010 after Bamila had made a complaint to the branch on 12.02.2010. On 17.02.2010 Velayudham had remitted Rs. 20,850/- to various SB Accounts. However, the petitioner accounted only Rs. 6,900 in respect of the SB Account standing in the name of Rathinam rather than Rs. 6,950 the amount required to be remitted and made good the balance amount of Rs. 50. On 22.10.2010 after a complaint was made by Velayudham. An enquiry was ordered on the charge sheet that was issued to the petitioner consequently. The petitioner had participated in the enquiry. In the enquiry proceedings the petitioner had admitted the guilt. The petitioner is not entitled to any relief. There is no necessity to interfere with the finding given by the Enquiry Officer on the punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority.

5. The petitioner had filed a rejoinder denying the allegations made in the Counter Statement and repeating his contentions in the Claim Statement.

6. The evidence in the case consists of the documents marked as Ext.W1 to Ext.W40 and Ext.M1 to Ext.M4.

7. The points for consideration are:

- (i) Whether the action of the Respondent in imposing the punishment of dismissal from service on the petitioner is legal and justified?
- (ii) If not, what is the relief to which the petitioner is entitled?

The Points

8. The petitioner had joined the service of the Respondent Bank as a Sub-Staff and was promoted to Clerical Cadre in 1990. The incident which resulted in the dismissal of the petitioner from service occurred in the year 2010. The Respondent Bank had raised two charges against the petitioner. One of the charge is that though an amount of Rs. 12,000 has been handed over to him on 27.1.2010 to be remitted to the credit of the loan account in the name of a Self Help Group, he failed to account the same in the books of the branch and returned it only after the person who entrusted the amount to him had given a complaint to the branch in writing. The second charge is that while remitting amount to the credit of a particular account he remitted Rs. 50 less and made good the amount only after a complaint was made by the remitter.

9. The petitioner has raised a vague contention in his Claim Statement that the enquiry was not a fair one for

him. According to him he was not properly represented in the enquiry proceedings, the person who represented on his behalf having been not sufficiently experienced to do the same. However, during the stage of trial there was no case for the petitioner that the enquiry proceedings was not conducted in a fair and proper manner. On going through the enquiry proceedings, it could be seen that the petitioner had fully participated in the enquiry and that he had sufficient opportunity to defend his case properly.

10. Now the question to be considered is whether the petitioner had committed the misconducts alleged. In the enquiry proceedings the Management had produced two witnesses including the Officer who investigated the case and had produced the relevant documents also.

11. Before going through the evidence let in before the Enquiry Officer, the very case of the petitioner regarding the whole incident is to be considered. It could be seen from the Claim Statement itself that the petitioner who had been present at the Bank on the day after the alleged incident had been on leave for the next 7 days. It is not disputed by him that he had returned the amount of Rs. 12,000 after a complaint was filed against him and also made good the shortage of Rs. 50. Ext.W2 is the representation given by the petitioner to revoke his suspension. In this representation itself it is admitted by him that he had received cash of Rs. 12,000 from Bamila. He has stated in his representation dated 04.06.2010 that on 27.01.2010 Bamila had been to the branch to remit Rs. 12,000 to the loan account of Roja Mahalir Self Help Group and that the amount has been handed over to him. As seen from the representation, while handing over the cash to him, Bamila had requested him to credit the amount after verifying the loan account number. Thus it is very much clear from Ext.W2, the representation given by the petitioner himself that he has received Rs. 12,000 from Smt. Bamila and yet had not credited the amount to the loan account of Roja Mahalir Self Help Group. Regarding the short accounting of Rs. 50 in the account of Velayudham he has stated in his representation that there was no excess cash on 17.02.2010 and so the mistake did not come to light. According to him this was due to excess payment made to someone and he had made good the amount on 20.02.2010 when he came to know about the mistake. During the enquiry proceedings also the petitioner had owned that he had committed the misconducts alleged. In answer to the Enquiry Officer he has stated that he has understood the charges read against him. He has then stated that he is admitting all the charges voluntarily. He has further stated that he is well aware of the consequences of such voluntary and unconditional admission of guilt also. Apart from the evidence let in, it was on the basis of this admission also the Enquiry Officer has entered findings against the petitioner.

12. MW1 who investigated the case has spoken about the misconducts committed by the petitioner. The defense representative has cross-examined this witness in detail. As could be seen the petitioner while questioned by MW1 also he has stated that he had received the amount but had failed to remit the amount to the credit of the concerned loan account.

13. It has been argued by the counsel for the petitioner that it was not a case of the petitioner acting dishonestly and against the interest of the bank. According to the counsel the conduct of the petitioner would reveal that there was no dishonest intention on his part. According to him the petitioner had made good the amounts as and when he realized the mistake and this itself would show that there was no intention on his part to cheat the customer or the Bank. According to the counsel at the most it must have been a case of negligence and not misappropriation.

14. In fact the circumstances available in this case would not allow one to accept the above argument on behalf of the petitioner. It is admitted by the petitioner himself that he had received the amount of Rs. 12,000 from the woman agreeing to credit the amount to the loan account. However, he has failed to do so. His case is that he has kept the cash in the drawer of the counter which is normally not in use and he had forgotten about it. But there is no case for him that he has subsequently recovered the amount. If that is so, it could not have been a case of mere negligence on the part of the petitioner. So far as the short remittance of Rs. 50 is concerned, as seen from the second charge there was voucher for Rs. 6,950 while only Rs. 6,900 has been remitted. When such evidence is there, there was every justification for the Enquiry Officer to enter a finding of guilt on the petitioner.

15. The petitioner was removed from service consequent to the finding against him. The counsel for the petitioner has argued that even if the finding is allowed to stand the punishment imposed on the petitioner is disproportionate to the guilt itself. According to the counsel it is a case where this Tribunal can interfere and impose a lesser punishment on the petitioner.

16. The counsel for the Respondent has referred to the decision of the Apex Court in JANATA BAZAR Vs. SECRETARY SAHAKARI NOUKARARA SANGHA AND OTHERS reported in (2000) 7 SCC 517 where it was held that Labour Court having found that the workmen committed breach of trust and misappropriation of funds entrusted to them, It should not have directed reinstatement of the workman. The counsel has also referred to the decision in DIVISIONAL CONTROLLER KSRTC VS. A.T. MANE reported in 2005 (3) SCC 254 where the Apex Court has held that while deciding the quantum of punishment what one should bear in mind is the loss of confidence and not the amount of money misappropriated.

It was further held that when a person is found guilty of misappropriation of corporation funds there is nothing wrong in the corporation losing confidence or faith in such a person and awarding him punishment of dismissal. Against this, the counsel for the petitioner has referred to the decision in ISHWAR CHANDRA JAYASWAL VS. UNION OF INDIA AND OTHERS reported in 2014 (1) LLN 286 where the Apex Court has interfered with the punishment of dismissal from service and imposed the punishment of Compulsory Retirement. It was a case where the appellant who was in Railway Service was found guilty of receiving bribe of meager amount. The Apex Court has observed that if the conscience of the Court is shocked as to the severity or inappropriateness of the punishment imposed there can be a fresh consideration of the matter. In the above decision the Apex Court has considered the fact that by the time the charge has been framed against the delinquent he had already given the best part of his life to the Indian Railways in which he was employed. This was also considered by the Apex Court in modifying and reducing the punishment.

17. The petitioner, as could be seen, had joined the service of the Respondent in the year 1980. He had worked as Sub-Staff with the Respondent for 10 long years and had been promoted to the Clerical Cadre in the year 1990. As a Clerk also he had worked for 10 long years before the incident happened. There is no case for the Respondent that the petitioner had any past record of misconduct. No monetary loss was caused to the Bank by the incident as the amount was made good by the petitioner. When these aspects are taken into account, it could be treated as a case where the punishment was disproportionate to the nature of the offence committed. I am inclined to modify the punishment and convert to one of Compulsory Retirement from service.

18. Accordingly, the punishment imposed on the petitioner is modified and is converted to Compulsory Retirement from service.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th June, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None
For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	29.05.2010	Suspension Order
Ex.W2	04.06.2010	Representation given by the petitioner

Ex.W3	24.06.2010	Charge Sheet
Ex.W4	30.06.2010	Revocation of Suspension
Ex.W5	03.07.2010	Order of Posting
Ex.W6	14.08.2010	Letter issued by Disciplinary Authority regarding appointment of Presenting Officer
Ex.W7	16.08.2010	Order of Posting
Ex.W8	18.08.2010	Order of Posting
Ex.W9	18.08.2010	Enquiry Notice
Ex.W10	15.09.2010	Enquiry Proceedings
Ex.W11	16.12.2010	Reply given by the petitioner
Ex.W12	17.02.2012	Enquiry Notice
Ex.W13	05.03.2011	Letter given by the petitioner
Ex.W14	18.03.2011	Letter given by the petitioner
Ex.W15	18.03.2011	Enquiry Proceedings
Ex.W16	28.03.2011	Written brief given by the Presenting Officer
Ex.W17	29.04.2011	Reply given by Defence Representative
Ex.W18	07.05.2011	Enquiry findings
Ex.W19	15.05.2011	Reply given by the petitioner
Ex.W20	31.05.2011	Personal Hearing Notice
Ex.W21	27.06.2011	Personal Hearing Notice
Ex.W22	28.06.2011	Dismissal Order
Ex.W23	18.07.2011	Appeal filed by the petitioner
Ex.W24	12.09.2011	Appellate Authority Order
Ex.W25	27.01.2012	Petition filed by the petitioner before ACL
Ex.W26	27.02.2012	Reply filed by Bank before ACL
Ex.W27	Jan/Feb. 2010	Attendance Register
Ex.W28	12.02.2010	Complaint Letter
Ex.W29	26.02.2010	Complaint Withdrawal Letter
Ex.W30	01.06.2009 to 22.04.2010	Loan Ledger
Ex.W31	23.02.2010	Credit Cash Voucher
Ex.W32	17.02.2010	Credit Cash Voucher
Ex.W33	17.02.2010	Credit Cash Voucher
Ex.W34	17.02.2010	Credit Cash Voucher
Ex.W35	17.02.2010	Credit Cash Voucher

Ex.W36	17.02.2010	Credit Cash Voucher
Ex.W37	01.01.2010 to 04.03.2010	Statement of SB Account
Ex.W38	20.01.2010	Credit Cash Voucher
Ex.W39	24.02.2010	Memo
Ex.W40	06.03.2010	Investigation Report

On the Management's side

Ex.No.	Date	Description
Ex.M1	30.08.2011	Proceedings of the personal hearing given to the claimant by the Appellate Authority
Ex.M2	30.08.2011	Submission of the claimant before the Appellate Authority
Ex.M3	04.03.2010	Statement of the claimant recorded by the Investigating Officer during investigation which is annexures to the Investigation Report
Ex.M4	-	Credit Cash Voucher dated 17.02.2010 for Rs. 6,950/- relating to SB A/c No. 34586 of M. Rathinam with backside (Management Exhibit No. 6).

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार के सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 93/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल. 12011/52/2013 आई आर (बी. II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 93/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 04/06/2014.

[No. L-12011/52/2013- IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I, CHANDIGARH**

Case No. ID 93 of 2013, Reference No. L-12011/52/2013-IR(B-II) dated 12.08.2013.

Smt. Aruna Jaggi
C/o The General Secretary,
Central Bank of India,
Employees Union (N.Z.)(Regd.),
146, Golden Avenue, Phase-I,
Jalandhar (Punjab)

....Workman

Versus

1. The Zonal Manager,
Central Bank of India,
Zonal Office, Sector-17,
Chandigarh.

2. The General Secretary,
Central Bank of India Employees
Union (N.Z.)(Regd)146,
Golden Avenue, Phase-1,
Jalandhar (Punjab).

....Respondent

Appearances:

For the Workman : None.

For the Management : Shri N.K. Zakhmi, Advocate

Award Passed On:-20.5.2014

Government of India Ministry of Labour vide Notification No.L-12011/52/2013-IR (B-II) dated 12.08.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the demand of the General Secretary, Central Bank of India Employees Union (N.Z.)(Regd.), 146, Golden Avenue, Phase-I, Jalandhar (Punjab) against the Zonal Manager, Central Bank of India, Zonal Office, Sector-17, Chandigarh for imposing of alleged illegal and severe punishment of bringing down by two stages in the scale of pay for a period of three years without cumulative effect to Smt. Aruna Jaggi, CTO, is just, valid & legal? What benefit the workman is entitled for and what directions are necessary in the matter?”

2. Case called repeatedly. None appeared on behalf of the workman despite registered notice. From the several dates, none is appearing for the workman nor any claim statement has been filed. For Management Sh. N.K. Zakhmi is present. It appears that the workman is not interested to pursue with the present reference. The same

is returned to the Central Govt. for want of Prosecution. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
20.05.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1952.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 16/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/03/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 16/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Erankulam as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank, and their workmen, received by the Central Government on 04/06/2014.

[No. L-12012/03/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present:

Shri. D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer
(Friday the 30th day of May, 2014/9th Jyaishta, 1936)

ID 16/2010

Workman : Smt T. Laila Marattumala Roadarikathu
Veedu Karamoodu, Kallayam PO
Thiruvananthapuram Dist.
By M/s. H. B. Shenoy, Associates

Management : The Regional Manager,
Vijaya Bank, Regional Office,
Jose Annexe, Jose Junction,
MG Road COCHIN – 16
By Adv. Shri R S Kalkura

This case coming up for final hearing on 26.05.2014 and this Tribunal-cum-Labour Court on 30.05.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), the Government of India/ Ministry of Labour by its Order No. L-12012/03/2010-IR(B-II) dated 10.03.2010 referred this industrial dispute for adjudication to this tribunal.

2. The dispute is:

‘Whether the action of the management of Vijaya Bank in terminating the services of Smt Laila T, Part time sweeper from the service of the bank w.e.f.08.04.2009 inspite of the fact that she was working with their Trivandrum branch and Vellayambalam branch from 1999 to 2009 is justified? What relief the workman is entitled to?’

3. The workman after appearance before this Tribunal filed claim statement alleging that she was employed as a part-time sweeper in the Pulimoodu branch of the management bank at Thiruvananthapuram on 28.01.1999 and she was in continuous service there until her transfer to the Sasthamangalam branch of the management bank at Thiruvananthapuram on 08.04.2007. Thereafter she was working there until the termination of her service on 08.04.2009. She was employed against a regular and permanent vacancy of part-time sweeper and had to discharge the duties of a regular and permanent part-time sweeper with privileges and benefits much lower than that afforded to a permanent part-time sweeper on the premise that her service was not regularized. In spite of repeated demands made by her she was not regularized in service and her service was orally terminated by the manager of the Sasthamangalam branch of the management bank w.e.f.08.04.2009. She was retrenched from service without complying with the requirements as provided under Section 25F of the Industrial Disputes Act, 1947 and in violation of the provisions in paragraphs 522, 523 and 524 of the Shastri Award. Those who were junior to her were retained in service by the management bank at the time of retrenchment in violation of Section 25G of the ID Act as well as paragraph 507 of the Shastri Award. Fresh hands were employed after her retrenchment in violation of Section 25H of the ID Act, clause 20.12 of the 1st Bipartite Settlement dated 19.10.1966 and paragraph 493 of the Shastri Award. Management bank used to employ sweepers as temporaries against permanent vacancies one after another and retrenched them to be replaced by new hands in the same way violating the statutory provisions, Awards and Bipartite Settlements. It amounts to unfair labour practice prohibited under Section 25T of the ID Act and violation of paragraphs 20.7 and 20.8 of the 1st Bipartite Settlement and paragraphs 495 and 522 of the Shastri Award. As per the terms of clause 20.12 of the 1st Bipartite Settlement management bank is bound to retain and absorb the workman in regular service especially when

there is vacancy. Instead of absorbing her in regular service the management bank had illegally retrenched her from service. Hence the retrenchment is to be declared illegal and she is to be reinstated in service with full back wages, continuity of service and other attendant benefits.

4. Management filed written statement denying the allegations in the claim statement and contending that the workman was engaged as a temporary part-time sweeper in the Trivandrum branch of the management bank on daily wage basis during the period from 06.08.2003 to 27.12.2007. But she had never worked for a continuous period of 240 days within 12 calendar months preceding her disengagement as a temporary part-time sweeper. She was not engaged through Employment Exchange as envisaged in the Rules and Guidelines relating to recruitment and reservation policy issued by the Govt. of India, but on the basis of the provisions contained in the Awards and Settlements for engagement of persons on temporary basis. Such a person does not have any legal right to be absorbed in permanent service even if she had worked for more than 240 days. During the period from 06.08.2003 to 27.12.2007 she was intermittently engaged as a temporary part-time sweeper for daily wages @ ₹ 50 to ₹ 75/- in the Trivandrum branch of the management bank as per the provision contained in paragraph 20.7 of the 1st Bipartite Settlement. The management bank is not having a branch by name Sasthamangalam branch. From 09.04.2007 she was intermittently engaged in the Vellayambalam branch of the management bank and it was not based on any transfer order issued to her. There is no question of issuing transfer order to temporary employees. The Kochi Regional Office of the management bank vide letter dated 02.06.2007 permitted the Vellayambalam branch to outsource the job of housekeeping by availing services of M/s. Vijaya Hospitality Services @ ₹ 2,500 per mensem from 01.06.2007 to 31.03.2008. The said agency deputed the workman to do the work assigned to that agency. The agency vide letter dated 30.06.2007 made request to the branch Manager of the Vellayambalam branch to pay ₹ 1,800/- to her from their bills and credit the balance in their account in the Vyttila branch of the management bank and the same was acceded to by the branch manager. Later the agency by its letter addressed to the Deputy General Manager, Regional Office, Vijaya Bank, Kochi informed that the workman who was engaged by them purely on contract basis (part-time) for housekeeping work at Vijaya Bank, Vellayambalam branch was terminated w.e.f.06.04.2009 since her work was found to be unsatisfactory. She was engaged by the housekeeping agency w.e.f.01.06.2007 and was removed by that agency. Hence there is no retrenchment of her service by the management bank. Since the removal was by the agency the provisions of Section 25F of the ID Act are not applicable against the management bank and there is no question of violation of Sections 25G and 25H of the ID

Act and the provisions of the Shastri Award or the Bipartite Settlement. As her engagement was on daily wage basis she is not entitled for regularisation even if the temporary engagement is for a period of more than three months. Such temporary employees can also compete with other candidates while making selection for permanent appointment and if other things are being equal the temporary employees will be given preference. The temporary employee will not acquire the status and privileges of permanent workman until and unless such temporary workman can be selected and appointed as permanent workman. There is no unfair practice in engaging workman on temporary basis. The management has not retrenched the workman and it is the contractor under whom she was working had removed her from service. There is no ground to reinstate her in services of the bank and she is not entitled for back wages, continuity of service and other attendant benefits as claimed by her.

5. Workman filed replication denying the contentions in the written statement and reaffirming the allegations in the claim statement.

6. For the purpose of deciding this reference the workman was examined as WW1 and Ext.W1 was got marked from the side of the workman. For the management two witnesses were examined as MW1 and MW2 and Exts.M1 to M21 were marked.

7. The points for determination are:-

- (i) Whether the workman was under the direct employment of the management bank as part-time sweeper from 28.01.1999 to 08.04.2007 as alleged in the claim statement?
- (ii) Whether she was engaged in the Vellayambalam branch of the management bank on outsource basis from 01.06.2007 to 06.04.2009 as contended in the written statement?
- (iii) Whether she was terminated from service by the management bank w.e.f.08.04.2009 and if so, it is legal and justifiable?
- (iv) Whether the workman is entitled to any relief?

8. **Point Nos.i & ii:-** These two points can be considered together in order to avoid repetition and for convenience. The case put forward by the workman is that she was continuously engaged as a part-time sweeper in the Pulimood branch from 28.01.1999 to 08.04.2007 and in the Sasthamangalam branch from 09.04.2007 until her termination from service on 08.04.2009. On the other hand it is contended by the management bank that she was intermittently engaged in the Trivandrum branch of the management bank from 06.08.2003 to 27.12.2007 on daily wage basis and later she was deputed to the Vellayambalam

branch by M/s.Vijaya Hospitality Services engaged by the management bank on contract basis for the job of housekeeping and that she was terminated from service by that agency w.e.f.06.04.2009 since her work was found to be unsatisfactory.

9. It is to be pointed out that it has come out in evidence that the Trivandrum branch and the Vellayambalam branch of the management bank are referred to as Pulimood branch and Sasthamangalam branch in the claim statement. It is also to be pointed out that M/s.Vijay Hospitality Services referred to as Vijaya Hospitality Services in the written statement was taken over by M/s.Vinay Housekeeping and Sales Pvt. Ltd. on 01.08.2007 and the same is evidenced by Ext.M13.

10. It is not in dispute that the workman was engaged as part-time sweeper in the Trivandrum branch of the management bank but there is no reliable evidence in this case to prove that she was continuously engaged from 28.01.1999 to 08.04.2007. According to the management bank she was intermittently engaged in the Trivandrum branch as part-time sweeper from 06.08.2003 to 27.12.2007. Exts.M4 series Vouchers, M6 and M7 Registers will go to show that she was engaged on daily wage basis. Whatever it be it has not much significance in this case as it is mainly to be considered whether she was under the direct employment of the management bank in the Vellayambalam branch or she was engaged on outsource basis by M/s. Vijay Hospitality Services during the period preceding the date of termination. There is ample evidence in this case to prove that she was engaged by M/s.Vijay Hospitality Services and subsequently by M/s.Vinay Housekeeping and Sales Pvt. Ltd. in the Vellayambalam branch of the management bank. It is the case of the management bank that the Regional Office, Kochi vide letter dated 02.06.2007 permitted the Vellayambalam branch to outsource the job of housekeeping by availing the service of M/s.Vijay Hospitality Services @ ₹ 2,500/- per mensem from 01.06.2007 to 31.03.2008. Ext.M11 is produced to prove the same. It is a letter addressed to the branch manager of the Vellayabalam branch by the Chief Manager of the Regional Office at Kochi of the management bank permitting the branch Manager to outsource the job of housekeeping by availing the services of M/s.Vijay Hospitality Services for providing housekeeping service @ ₹ 2,500/- per month from 01.06.2007 to 31.03.2008. Ext.M12 is a letter dated 30.06.2007 addressed to the manager of Vellayambalam branch from M/s.Vijay Hospitality Services with a request to make payment of ₹ 1,800/- to the workman from their bills and credit the balance in their account at the Vyttila branch of the management bank throughout the period of contract. From Ext.M10, the certified computer statement of the ledger account in respect of the General Charges for the period from 30.06.2007 to 30.04.2009, it can be seen that ₹ 2,500/- was being debited as cleaning charges from the month of

June, 2007 onwards. Ext.M5 series would prove the payment of housekeeping charges to M/s.Vijay Hospitality Services and M/s.Vinay Housekeeping and Sales Pvt. Ltd. The contract for the housekeeping service with M/s.Vinay Housekeeping and Sales Pvt. Ltd. was renewed for the period from 01.04.2008 to 31.03.2009 and subsequently for the period from 01.04.2009 to 31.03.2010 and the same is proved through Exts.M14 to M18. The Managing Director of M/s.Vinay Housekeeping and Sales Pvt. Ltd. was examined as MW2. He has also given evidence to prove that the workman was engaged by the agency for the housekeeping job in the Vellayambalam branch of the management bank. It was deposed by him that Ext.M19 is the copy of the annual return submitted to the Provident Fund authority and Ext.M20 is the annual return submitted to the Employees' State Insurance Corporation from their agency wherein the workman in this case is listed as an employee of the agency. It was stated by him that Ext.M21 is the copy of the letter sent to the Deputy General Manager, Regional Office, Kochi from the agency as to the termination of the workman w.e.f.06.04.2009. Nothing has been brought out during his cross examination to disbelieve his version as to the engagement of the workman by the agency in the Vellayambalam branch of the management bank for housekeeping job. Even Ext.W1 Pass Book of the workman as to the Savings Bank account in the Vellayambalam branch produced in this case will also prove the case of the management bank that the workman was engaged by the agency and payments were made to her as per the request made by the agency. There is nothing on record to show that the workman was working in the Vellayambalam branch from 01.06.2007 onwards on direct employment by the management bank. Management has succeeded in establishing that the workman was working in the Vellayambalam branch on deputing her by the agency engaged for housekeeping service on contract basis. There is absolutely no reliable evidence in this case to prove that she was directly engaged by the management bank during that period. She was working at that time as the employee of the agency and not as that of the management bank. Hence it can very well be held that the workman was working in the Vellayambalam branch of the management bank from 01.06.2007 onwards as engaged by M/s Vijay Hospitality Services followed by M/s.Vinay Housekeeping & Sales Pvt. Ltd. and not under the direct employment of the management bank.

11. Point No. iii:- Since the workman was found to be not an employee of the management bank preceding the date of alleged termination it cannot in any way be said that her service was illegally terminated by the management. There is evidence to prove that the cessation of employment was due to the termination of her service by M/s.Vinay Housekeeping agency.

12. Point No. iv:- Since it is found that the workman was not under the direct employment of the management

bank from the month of June, 2007 onwards in its Vellayambalam branch she is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of May, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witnesses for the Workman :

WW1 - 20.03.2013 Smt T. Laila

Witnesses for the Management :

MW1 - 07.11.2013 Shri Shibu D. S.

MW2 - 08.01.2014 Shri Ajithkumar A.

Exhibits for the Workman :

W1 - Pass Book in respect of Savings Bank Account No. 207101011001041 in the name of Smt. T. Laila in the Vellayambalam branch of Vijaya Bank

Exhibits for the Management :

M1 - True copy of the General Power of Attorney executed in favour of Shri D. S. Shibu on 24.03.2006

M2 - True copy of letter No.F.No.1/2/1/77-IR dated 10.06.1980 issued by the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division)

M2(1) - True copy of guidelines No.F.No.1/2/1/77/IR dated 30.09.1978 issued by the Govt. of India, Ministry of Finance, Department of Economic Affairs(Banking Division)

M2(2) - True copy of letter No.F.No.1/2/1/77-IR dated 03.06.1980 issued by the Deputy Secretary to the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division)

M3 - True copy of Chapters XX to XXII of the 1st Bipartite Settlement

M4 - Debit Voucher of the General Charges dated 07.08.2003

M4(1) - Debit Voucher of the General Charges dated 02.09.2003

M4(2) - Debit Voucher of the General Charges dated 08.10.2003

M4(3)	-	Debit Voucher of the General Charges dated 10.11.2003	M4(26)	-	Debit Voucher of the General Charges dated 04.07.2005
M4(4)	-	Debit Voucher of the General Charges dated 09.12.2003	M4(27)	-	Debit Voucher of the General Charges dated 29.07.2005
M4(5)	-	Debit Voucher of the General Charges dated 02.01.2004	M4(28)	-	Debit Voucher of the General Charges dated 18.08.2005
M4(6)	-	Debit Voucher of the General Charges dated 20.01.2004	M4(29)	-	Debit Voucher of the General Charges dated 22.08.2005
M4(7)	-	Debit Voucher of the General Charges dated 21.01.2004	M4(30)	-	Debit Voucher of the General Charges dated 13.09.2005
M4(8)	-	Debit Voucher of the General Charges dated 04.02.2004	M4(31)	-	Debit Voucher of the General Charges dated 19.09.2005
M4(9)	-	Debit Voucher of the General Charges dated 20.02.2004	M4(32)	-	Debit Voucher of the General Charges dated 24.10.2005
M4(10)	-	Debit Voucher of the General Charges dated 21.02.2004	M4(33)	-	Debit Voucher of the General Charges dated 02.11.2005
M4(11)	-	Debit Voucher of the General Charges dated 16.04.2004	M4(34)	-	Debit Voucher of the General Charges dated 19.11.2005
M4(12)	-	Debit Voucher of the General Charges dated 05.05.2004	M4(35)	-	Debit Voucher of the General Charges dated 05.12.2005
M4(13)	-	Debit Voucher of the General Charges dated 09.07.2004	M4(36)	-	Debit Voucher of the General Charges dated 20.01.2006
M4(14)	-	Debit Voucher of the General Charges dated 20.07.2004	M4(37)	-	Debit Voucher of the General Charges dated 23.01.2006
M4(15)	-	Debit Voucher of the General Charges dated 10.08.2004	M4(38)	-	Debit Voucher of the General Charges dated 25.02.2006
M4(16)	-	Debit Voucher of the General Charges dated 13.08.2004	M4(39)	-	Debit Voucher of the General Charges dated 27.02.2006
M4(17)	-	Debit Voucher of the General Charges dated 28.12.2004	M4(40)	-	Debit Voucher of the General Charges dated 04.04.2006
M4(18)	-	Debit Voucher of the General Charges dated 21.01.2005	M4(41)	-	Debit Voucher of the General Charges dated 10.04.2006
M4(19)	-	Debit Voucher of the General Charges dated 31.01.2005	M4(42)	-	Debit Voucher of the General Charges dated 24.04.2006
M4(20)	-	Debit Voucher of the General Charges dated 29.03.2005	M4(43)	-	Debit Voucher of the General Charges dated 05.05.2006
M4(21)	-	Debit Voucher of the General Charges dated 30.04.2005	M4(44)	-	Debit Voucher of the General Charges dated 26.05.2006
M4(22)	-	Debit Voucher of the General Charges dated 19.05.2005	M4(45)	-	Debit Voucher of the General Charges dated 30.05.2006
M4(23)	-	Debit Voucher of the General Charges dated 21.05.2005	M4(46)	-	Debit Voucher of the General Charges dated 24.06.2006
M4(24)	-	Debit Voucher of the General Charges dated 08.06.2004	M4(47)	-	Debit Voucher of the General Charges dated 26.06.2006
M4(25)	-	Debit Voucher of the General Charges dated 29.06.2005	M4(48)	-	Debit Voucher of the General Charges dated 07.07.2006

M4(49)	-	Debit Voucher of the General Charges dated 13.07.2006	M4(72)	-	Debit Voucher of the General Charges dated 06.02.2007
M4(50)	-	Debit Voucher of the General Charges dated 19.07.2006	M4(73)	-	Debit Voucher of the General Charges dated 07.02.2007
M4(51)	-	Debit Voucher of the General Charges dated 31.07.2006	M4(74)	-	Debit Voucher of the General Charges dated 08.02.2007
M4(52)	-	Debit Voucher of the General Charges dated 21.08.2006	M4(75)	-	Debit Voucher of the General Charges dated 09.02.2007
M4(53)	-	Debit Voucher of the General Charges dated 14.09.2006	M4(76)	-	Debit Voucher of the General Charges dated 10.02.2007
M4(54)	-	Debit Voucher of the General Charges dated 19.09.2006	M4(77)	-	Debit Voucher of the General Charges dated 12.02.2007
M4(55)	-	Debit Voucher of the General Charges dated 09.10.2006	M4(78)	-	Debit Voucher of the General Charges dated 13.02.2007
M4(56)	-	Debit Voucher of the General Charges dated 11.10.2006	M4(79)	-	Debit Voucher of the General Charges dated 15.02.2007
M4(57)	-	Debit Voucher of the General Charges dated 12.01.2007	M4(80)	-	Debit Voucher of the General Charges dated 17.02.2007
M4(58)	-	Debit Voucher of the General Charges dated 16.01.2007	M4(81)	-	Debit Voucher of the General Charges dated 19.02.2007
M4(59)	-	Debit Voucher of the General Charges dated 17.01.2007	M4(82)	-	Debit Voucher of the General Charges dated 20.02.2007
M4(60)	-	Debit Voucher of the General Charges dated 18.01.2007	M4(83)	-	Debit Voucher of the General Charges dated 21.12.2007
M4(61)	-	Debit Voucher of the General Charges dated 19.01.2007	M4(84)	-	Debit Voucher of the General Charges dated 23.02.2007
M4(62)	-	Debit Voucher of the General Charges dated 22.01.2007	M4(85)	-	Debit Voucher of the General Charges dated 24.02.2007
M4(63)	-	Debit Voucher of the General Charges dated 23.01.2007	M4(86)	-	Debit Voucher of the General Charges dated 26.02.2007
M4(64)	-	Debit Voucher of the General Charges dated 24.01.2007	M4(87)	-	Debit Voucher of the General Charges dated 27.02.2007
M4(65)	-	Debit Voucher of the General Charges dated 25.01.2007	M4(88)	-	Debit Voucher of the General Charges dated 01.03.2007
M4(66)	-	Debit Voucher of the General Charges dated 29.01.2007	M4(89)	-	Debit Voucher of the General Charges dated 02.03.2007
M4(67)	-	Debit Voucher of the General Charges dated 30.01.2007	M4(90)	-	Debit Voucher of the General Charges dated 05.03.2007
M4(68)	-	Debit Voucher of the General Charges dated 01.02.2007	M4(91)	-	Debit Voucher of the General Charges dated 06.03.2007
M4(69)	-	Debit Voucher of the General Charges dated 02.02.2007	M4(92)	-	Debit Voucher of the General Charges dated 07.03.2007
M4(70)	-	Debit Voucher of the General Charges dated 03.02.2007	M4(93)	-	Debit Voucher of the General Charges dated 08.04.2007
M4(71)	-	Debit Voucher of the General Charges dated 05.02.2007	M4(94)	-	Debit Voucher of the General Charges dated 12.03.2007

M4(95)	-	Debit Voucher of the General Charges dated 13.03.2007	M4(118)	-	Debit Voucher of the General Charges dated 03.05.2007
M4(96)	-	Debit Voucher of the General Charges dated 15.03.2007	M4(119)	-	Debit Voucher of the General Charges dated 04.05.2007
M4(97)	-	Debit Voucher of the General Charges dated 16.03.2007	M4(120)	-	Debit Voucher of the General Charges dated 07.05.2007
M4(98)	-	Debit Voucher of the General Charges dated 17.03.2007	M4(121)	-	Debit Voucher of the General Charges dated 08.05.2007
M4(99)	-	Debit Voucher of the General Charges dated 19.03.2007	M4(122)	-	Debit Voucher of the General Charges dated 09.05.2007
M4(100)	-	Debit Voucher of the General Charges dated 20.03.2007	M4(123)	-	Debit Voucher of the General Charges dated 11.05.2007
M4(101)	-	Debit Voucher of the General Charges dated 22.03.2007	M4(124)	-	Debit Voucher of the General Charges dated 15.05.2007
M4(102)	-	Debit Voucher of the General Charges dated 23.03.2007	M4(125)	-	Debit Voucher of the General Charges dated 16.05.2007
M4(103)	-	Debit Voucher of the General Charges dated 24.03.2007	M4(126)	-	Debit Voucher of the General Charges dated 19.05.2007
M4(104)	-	Debit Voucher of the General Charges dated 26.03.2007	M4(127)	-	Debit Voucher of the General Charges dated 13.07.2007
M4(105)	-	Debit Voucher of the General Charges dated 27.03.2007	M4(128)	-	Debit Voucher of the General Charges dated 14.08.2007
M4(106)	-	Debit Voucher of the General Charges dated 28.03.2007	M4(129)	-	Debit Voucher of the General Charges dated 05.09.2007
M4(107)	-	Debit Voucher of the General Charges dated 29.03.2007	M4(130)	-	Debit Voucher of the General Charges dated 13.09.2007
M4(108)	-	Debit Voucher of the General Charges dated 30.03.2007	M4(131)	-	Debit Voucher of the General Charges dated 06.11.2007
M4(109)	-	Debit Voucher of the General Charges dated 03.04.2007	M4(132)	-	Debit Voucher of the General Charges dated 13.11.2007
M4(110)	-	Debit Voucher of the General Charges dated 07.04.2007	M4(133)	-	Debit Voucher of the General Charges dated 23.11.2007
M4(111)	-	Debit Voucher of the General Charges dated 09.04.2007	M4(134)	-	Debit Voucher of the General Charges dated 29.11.2007
M4(112)	-	Debit Voucher of the General Charges dated 10.04.2007	M4(135)	-	Debit Voucher of the General Charges dated 27.12.2007
M4(113)	-	Debit Voucher of the General Charges dated 11.04.2007	M5	-	Debit Voucher of the General Charges dated 30.06.2007
M4(114)	-	Debit Voucher of the General Charges dated 13.04.2007	M5(1)	-	Debit Voucher of the General Charges dated 31.07.2007
M4(115)	-	Debit Voucher of the General Charges dated 19.04.2007	M5(2)	-	Debit Voucher of the General Charges dated 24.08.2007
M4(116)	-	Debit Voucher of the General Charges dated 25.04.2007	M5(3)	-	Debit Voucher of the General Charges dated 28.09.2007
M4(117)	-	Debit Voucher of the General Charges dated 27.04.2007	M5(4)	-	Debit Voucher of the General Charges dated 31.10.2007

M5(5)	-	Debit Voucher of the General Charges dated 30.11.2007	M11	-	True copy of letter No.ROK/GAD/R/1210/2007 dated 02.06.2007 addressed to the Branch Manager, Vellayambalam branch by the Chief Manager, Vijaya Bank, Regional Office, Kochi
M5(6)	-	Debit Voucher of the General Charges dated 31.12.2007			
M5(7)	-	Debit Voucher of the General Charges dated 31.01.2008	M12	-	Letter dated 30.06.2007 addressed to the Manager, Vijaya Bank, Vellayambalam branch by M/s.Vijay Hospitality Services, Kakkanad, Kochi
M5(8)	-	Debit Voucher of the General Charges dated 29.02.2008			
M5(9)	-	Debit Voucher of the General Charges dated 31.03.2008			
M5(10)	-	Debit Voucher of the General Charges dated 30.04.2008	M13	-	Letter dated 01.08.2007 addressed to the Manager, Vijaya Bank, Vellayambalam branch by M/s.Vijay Hospitality Services, Kakkanad, Kochi
M5(11)	-	Debit Voucher of the General Charges dated 02.06.2008			
M5(12)	-	Debit Voucher of the General Charges dated 02.07.2008			
M5(13)	-	Debit Voucher of the General Charges dated 01.08.2008	M14	-	True copy of letter No.ROK/GAD/R/337/2008 dated 27.05.2008 addressed to the Branch Manager, Vellayambalam branch by the Chief Manager, Vijaya Bank, Regional Office, Kochi
M5(14)	-	Debit Voucher of the General Charges dated 01.09.2008			
M5(15)	-	Debit Voucher of the General Charges dated 03.09.2008	M15	-	True copy of letter dated 27.05.2008 addressed to the Branch Manager, Vellayambalam branch by the Chief Manager, Vijaya Bank, Regional Office, Kochi
M5(16)	-	Debit Voucher of the General Charges dated 03.11.2008			
M5(17)	-	Debit Voucher of the General Charges dated 02.12.2008			
M5(18)	-	Debit Voucher of the General Charges dated 02.01.2009	M16	-	True copy of letter No.ROK/GAD/R/2351/2009 dated 01.04.2009 addressed to the Branch Manager, Vellayambalam branch by the Chief Manager, Vijaya Bank, Regional Office, Kochi
M5(19)	-	Debit Voucher of the General Charges dated 02.02.2009			
M5(20)	-	Debit Voucher of the General Charges dated 02.03.2009	M17	-	True copy of the letter dated 06.04.2009 addressed to M/s.Vinay Housekeeping & Sales Pvt. Ltd., Thrikkakara, Kochi by the Branch Manager, Vijaya Bank, Vellayambalam Branch, Sasthamangalam, Thiruvananthapuram
M5(21)	-	Debit Voucher of the General Charges dated 02.04.2009			
M6	-	Expenditure Register for the period 2005-2006			
M7	-	Expenditure Register for the period 2006-2007	M18	-	True copy of the letter dated 01.04.2009 addressed to M/s.Vinay Housekeeping & Sales Pvt. Ltd., Thrikkakara, Kochi by the Branch Manager, Vijaya Bank, Vellayambalam Branch, Sasthamangalam, Thiruvananthapuram
M8	-	Expenditure Register for the period 2007-2008			
M9	-	Expenditure Register for the periods 2008-2009 and 2009-2010			
M10	-	True copy of the computer statement of pages 2 to 27 of the ledger account in respect of General Charges for the period 30.06.2007 to 30.04.2009 of the Vellayambalam branch of the management bank	M19	-	True copy of the covering letter dated 20.07.2009 with annual returns for the year 2008- 2009 for the period from 01.10.2008 to 31.03.2009

addressed to the Regional PF Commissioner, Kochi by the Managing Director, Vinay Housekeeping & Sales Pvt. Ltd., Thrikkakkara, Kochi

- M20 - Copy of Form-5 Return of Contributions submitted by the Managing Director, Vinay Housekeeping & Sales Pvt. Ltd., Thrikkakkara, Kochi to the Employees' State Insurance Corporation, Kochi
- M21 - Copy of the letter dated NIL addressed to the Deputy General Manager, Regional Office, Kochi of the management bank by the Managing Director, Vinay Housekeeping & Sales Pvt. Ltd., Thrikkakkara, Kochi.

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1953.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कारपोरेशन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-II, दिल्ली के पंचाट (संदर्भ संख्या 02/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/18/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.-II, Delhi as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/18/2007-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI

Present:-

Shri HARBANSH KUMAR SAXENA

ID No. 02/2014

Sh. Narender Bahadur Singh

Versus

Corporation Bank

AWARD

The Central Government in the Ministry of Labour vide notification No L- 12011/18/2007-IR(B-II) dated 11.01.2008 referred the following industrial Dispute to this tribunal for adjudication:-

Whether the action of the management of Corporation Bank, AryaSamaj Road, Karol Bagh in terminating the services of Sh. NarenderBahadur Singh, Personal Car Driver w.e.f. 13.07.2006 is legal and justified? If not, to what relief the concerned workman is entitled?"

On 09/04/2008 reference was received in this tribunal. Which was register as I.D. No. 08/2008 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 30.3.2010 case was transferred to CGIT-I from this Tribunal. On transfer it was registered as I.D. No. 54/2011.

On 9.01.2014 case was again transfer to this Tribunal from CGIT -I. On transfer it was registered as I.D. No. 2/2014.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:-

1. That the workman was employed by the aforesaid management at Zonal Office, Karol Bagh w.e.f. 01.11.1999 as CAR DRIVER on sanctioned post, though no letter of appointment had ever been issued to him. His last drawn wages were Rs. 5000.00 per month as consolidated wages.

2. That the claimant/workman used to drives the Vehicle bearing No's. DL-6CK - 3958 & DL-2C-AC 9635 which were specifically owned and purchased by the management No.1 for discharging the outdoor duties by the Bank's Officials.

3. That the workman had worked flawlessly and continuously under the supervision and control of management No.1 no adverse remarks ever reported against him. It is further submitted that the workman had rendered more than 240 days in each calendar year during the period of his employment under the management.

4. That the attendance of the workman used to be marked by the concerned Official and on the basis of his attendance, the workman used to receive his wages directly from the Bank on vouchers.

5. That the claimant/workman alongwith other Drivers who has been working at different branches under

the management approached in a consorted manner to the Union for getting their services regularized and accordingly a Charter of Demand was served on to both the managements. It is submitted that the management deliberately did not respond to Charter of Demands despite of receipt of the same. Feeling aggrieved, the Union on behalf of Drivers, raised an Industrial Dispute with regard to regularization in services which is still pending before this Hon'ble Court for adjudication.

6. That the day when the union raised an Industrial Dispute against the management, the top management such as G.M./AGM etc. got annoyed with each Driver including the workman and in a retaliatory means, the services of the workman were terminated on 13.07.2006 by Sh.S.K. Aggarwal (Manager) by uttering few words that the services of the workman are not required any longer or without assigning any reason.

7. That the termination of the services of the workman without complying the provisions of 25 F of Industrial Dispute Act., 1947 amounts to wrongful termination which is void ab-initio.

8. That during the terms of employment under the management, the claimant/workman used to work under different Executives, since the services of the Executives used to be transferred from one branch to other, but the duties of the workman remains at the same position. In other words, the sudden transfers did not alter the condition of work in any manner.

9. That the workman used to get wages from the Branch itself, but the mode of payment of wages were changed by the management immediate after receipt of Charter of Demands on behalf of workmen.

10. That the management having its own policy to regularize the services of the Drivers and in furtherance of the same policy the services of one Driver Shri. Sanjeev Kumar S/o Sh. Roshan Lal were regularized w.e.f. 09.06.2007 and he was designed as Driver-cum-Peon, whereas left the other workers unattended.

11. That the wrongful terminating on the part of management is an attempt to demoralize the other claimants who are strongly participating the proceedings before the Hon'ble court in the matter of Regularisation.

12. That the workman had sent a demand notice on 15.7.2006 under Regd. Post to both the management, Which were received by them but failed to respond the same.

13. That the workman is out of job since the date of his illegal termination and despite of his best efforts to secure a gainful employment elsewhere, he could not get succeeded.

It is therefore prayed that the Hon'ble Court may be pleased to pass an award in favour of the workman while directing the management to reinstate the workman back

on duty with full back wages alongwith consequential benefits.

Against claim statement management filed following written statement:-

1. That the claim of the petitioner is absolutely misconceived and without merits, therefore, liable to be dismissed at the threshold.

2. That the personal car drives are engaged by the executives of the bank in their personal capacity are not 'workman' within the meaning of section 2(s) of Industrial Disputes Act, 1947. Therefore, Delhi workers union, which espoused the cause of personal car driver of the executives of the bank, has no locus-standi to raise the industrial disputes claim merit dismissal on this ground alone.

3. That there is no cadre of a 'personal car driver' in the respondent bank and as per the bank's policy, whenever the eligible officers engaged personal drivers, reimbursement was permitted to these officers under the head 'allowances' on the basis of the scale set down by respondent bank from time to time.

4. That there is no sanctioned post of personal car drivers of the executives of the bank and the approval from the head office is not the sine qua non of such an engagement of personal drivers by the executives in their personal services. The executives of the bank are engaging a car driver are thereafter reimbursed by the bank to the executives concerned. It is pertinent to mention that such car drivers are engaged by the executive concerned for which no permission is required from head office and even same was not subjected to normal recruitment process for the selection of workman as per the rule of public appointment. It is worthwhile mentioning that the Bank being a Nationalized bank and its appointment being public appointments and are based on rules and regulations framed by the bank based on Directives of Central Government.

5. It is submitted that whenever vacancies of sub staff arises either permanent or temporary such vacancies are notified to the Local Employment Exchange and after obtaining the panel of candidates, the candidates fulfilling the eligibility criteria are called for interview and selection is made by the committee, consisting of panel of the officials of prescribed cadre. It is pertinent to mention that no recruitment or selection is allowed dehors the rules which is against the public policy. It is pertinent to mention that the object of the Article 226 of the constitution is enforcement and not the Declaration or establishment of the right claimed.

6. That the bank has no control over the engagement of personal car driver and there is no relationship of master and servant between the personal car driver engaged by the executives and the bank. These personal car drivers were neither issued with the letter of appointment nor with

any letter of termination by the bank. Thus, the service of personal car drivers were never under the supervision and direct control of the Management /bank.

7. That it is reiterated that since the personal car driver/claimant is not workman under section 2(s) of the Industrial Disputes Act, 1947, therefore the question of issuing notice/compliance of the provisions of section 25 F of Industrial Disputes Act, 1947 does not arise. Therefore, there cannot be any termination/engagement of the services of personal car drivers.

8. That without prejudice to above it is submitted that a scheme for absorption of personal car drivers engaged by the executives in regular services of the bank as sub staff (Peon) as approved by the Bank's Board was in vogue in the bank since 1989. This scheme provided for the absorption of five senior most such personal car drivers every year, as peon subject to their fulfilling certain eligibility norms as laid down in the scheme. That the scheme for absorption of personal car drivers engaged by executives in the regular services of the bank came to be discontinued as per Board's Directive. Consequent of the Govt. Communication F.No. 9/5/92/IR dated 23.06.1997, the discontinuation of the scheme was informed to all executives eligible to engage personal car drivers. Needless to say that Sh. Narender Bahadur Singh was engaged as personal driver of an executive on and from 01.11.1999 after the discontinuation of the said scheme.

REPLY ON MERITS

1. That the contents of para No. 1 of the claim petition are wrong as stated, hence denied. It is vehemently denied that the claimant was employed by the management at Zonal Office, Karol Bagh w.e.f. 01.11.1999 as Car Driver on sanctioned post, though no letter of appointment had ever been issued to him. It is submitted that the claimant is engaged as personal driver by an executive not by the bank. Therefore, there is no need for letter of appointment to be issued to him by the bank.

2. That the contents of para No. 2 of the Claim petition needs no reply.

3. That the contents of para No. 3 of the claim petition are wrong and denied as stated, except wherever specifically admitted. It is incorrect to suggest that the workman had rendered more than 240 days in each calendar year during the period of his employment under the management. In this regard it is submitted that performance of such kind of duties cannot be presumed as duties entrusted by the bank since car allotted to the executive is being used by the personal driver for the executive's purposes and by no stretch of imagination personal driver can be considered to be in the employment of the bank and under the direct control and supervision of the bank. It is further submitted that the claimant/personal drivers never received any salary/wages directly from the respondent bank.

4. That the contents of para No. 4 of claim petition are wrong and denied. It is vehemently denied that the workman used to receive his wages directly from the bank on vouchers. In this regard it is submitted that so far as salaries paid to the claimants/car drivers are concerned the executives who are using their personal services after making the payments of same of the car driver, seek reimbursement from the bank since these executives are made available certain allowances, commonly known as perquisites, to facilitate the use of car provided to them for use as per bank's guidelines. Hence, the claimant be put strict proof of the averments so made in para under reply.

5. That the contents of para No. 5 of the claim petition are wrong and denied in toto. In response to the averments made in para under reply the preliminary objections made herein above be read as part and parcel of the para under reply as the same are not being repeated here for the sake of brevity. Moreover, the workers union mentioned in para under reply has no locus-standi to represent the claimant/personal car drivers.

6. That the contents of para No. 6 of the claim petitioner are wrong and denied. The Claimant be put to strict proof of averments made in para under reply.

7. That the contents of para No. 7 of the claim petition are wrong and denied in toto. In response to the averments made in para under reply the preliminary objections made hereinabove be read as part parcel of the para under reply as the same are not being repeated here for the sake of brevity.

8. That the contents of para No. 8 of the claim petition are wrong and denied in toto. It is reiterated that the personal car drivers engaged by the executives in their personal capacity are not 'workmen' under Section 2(s) of the Industrial Disputes Act, 1947.

9. That the contents of para No. 9 of the claim petition are wrong and denied. It is emphatically and specifically denied that earlier the workman used to get their wages from the bank itself. But the mode of payment of wages were changed by the management immediate after receipt of charter of demands on behalf of workman. The claimants be put strict proof of averments so made in para under reply and in response to the allegations made in para under reply the preliminary objections made hereinabove be read as part and parcel of the para under reply as the same are not being repeated here for the sake of brevity.

10. That the contents of para No. 10 of the claim petition are wrong and denied. It is denied that management have its own policy to regularize the services of the drivers and in pursuance of the policy the services of one claimant Sh. Sanjeev Kumar S/o Sh. Roshan Lal was regularized w.e.f. 09.06.2007 as driver. Whereas left the other workers unattended. The claimant be put the

strict proof of the averments made in para under reply and the contents of para No. 2 of the preliminary objections made hereinabove be read as part and parcel of the reply to the contentions made by the claimants in para under reply.

11. That the contents of para No. 11 of the claim petition are wrong and denied in toto. The claimant be put to strict proof of the averments made in para under reply.

12. That the contents of para No. 12 of the claim petition are wrong and denied in toto. In response to the averments made in para under reply the preliminary objections made hereinabove be read as part and parcel of the para under reply as the same are not being repeated here for the sake of brevity.

13. That the contents of para No. 13 of the claim petition are wrong and denied. It is vehemently denied that the termination of the claimant is illegal. In response to averments made in para under reply the preliminary objections made hereinabove be read as part and parcel of the para under reply as the same are not being repeated here for the sake of brevity.

14. That the unnumbered para is a prayer clause. The same is wrong and denied. The claim of the claimant / car driver merits dismissal in view of the facts that there is on cadre of 'Personal Car Driver' in the respondent bank as per the bank's policy.

It is , therefore, prayed that under the facts and circumstances of the case and in the interest of justice that the claim of claimant/Car Driver against the management/opposite party be dismissed as the claimant is not entitled to any relief against the management/opposite party.

Workman filed rejoinder wherein he stated as follows:-

1-4 Contents of para No. 1 to 4 are wrong and denied. It is emphatically denied that the claimant is not a workman as defined under Section 2 (s) of the Industrial Dispute Act. It is further denied that Delhi General Workers Union has no locus standi to raise an Industrial Dispute. It is denied that there is no cadre of Driver/Personal Car Drivers in the respondent Bank. It is denied that there is no sanctioned post of drivers under the Bank. It is denied that the Car Driver is engaged by the executive concerned in their personal services. It is denied that the executives of the bank are engaging Car Driver in the personal capacity and wages paid by them to their personal car concerned. It is denied that no permission is required from Head Office at the time of engagement of drivers.

5-6. Contents of para No. 5 to 6 are wrong and denied. It is submitted that out of the total strength of car drivers, one Sh. Sanjeev Kumar son of Sh. Roshan Lal was also earlier working as personal car driver under the Bank

and being a claimant, he had also signed the demand notice dt.09.01.2006 and subsequent Charter of demands. It is further submitted that after receipt of demand notice as well as charter of demands, the services of Sh. Sanjeev Kumar got regularised w.e.f 10.05.2007 where left the other claimants unattended. It is denied that the Bank has no control over the engagement of Car Driver and there is no relationship of Master and servant between the personal car driver engagement by the executive and the bank. It is denied that the services of personal Car Drivers were never under the supervision and direct control of the management.

7-8. Contents of para No. 7 and 8 are wrong and denied. It is further denied that the scheme for absorption of personal car drivers engaged by executives in the regular service of the bank came to be discontinued as per Board's Directive. Consequent of the Govt. Communication F. NO. 9/5/92 dtd. 23.6.1997. It is admitted that the workman was appointed driver w.e.f. 01.11.1999.

REPLY ON MERITS:

01. Contents of para No. 1 is admitted to the extent that the workman was engaged w.e.f 01.11.1999. Rest para is denied. The corresponding para of S/claim is reiterated and reaffirmed.

2. Contents of para No. 2 are admitted.

03-14 Contents of para No. 3 to 14 are wrong and denied. The corresponding para of S/claim are reiterated and reaffirmed.

The prayer clause of the management is vexatious hence denied.

It is therefore prayed that the Hon'ble Court may be pleased to pass an award in favour of the workman and against the management while directing the management to reinstate the workman back on duty with full back wages.

On the basis of pleadings following issues has been framed by my Ld. predecessor on 02.09.2009:-

1. As per terms of reference?

2. Relief.

Workman in support of his case filled affidavit in his evidence. Wherein he stated as follows:-

1. That the deponent was employed by the aforesaid management at Zonal Office Karol Bagh as Car Driver w.e.f 01.11.1999 on sanctioned post, though no letter of appointment had ever been issued to him. His last drawn wages were Rs. 5000.00 per month as consolidated wages.

2. That the deponent used to drive the Vehicle bearing Nos. DL-6 C K-3958 & DL-2 C-A C-9635 which were specifically owned and purchased by the management

No.1 for discharging the outdoor duties by the Bank's officials.

3. That the deponent had worked flawlessly and continuously under the supervision and control of management No. 1 and no adverse remarks ever reported against him. It is correct to state that the deponent had rendered more than 240 days in each calendar year during the period of his employment under the management.

4. That the attendance of the deponent used to be marked by the concerned officer under the management No.1 and on the basis of attendance, the deponent used to get his wages directly from the Bank on vouchers.

5. That the deponent alongwith other co-workmen/Driver who has been working at different branches under the management No.1 approached in a consorted manner to the union for raising their cause before the Courts of law and for that purpose they made request to the bank that their services must be regularized in the present post and accordingly a Charter of Demands was served on to both the management. It is correct to state that the management deliberately did not respond same despite receipt of the same. Feeling aggrieved, the union on behalf of Drivers, raised an Industrial Dispute against the management for the regularization in services which is still pending before this Hon'ble Court for adjudication.

6. That the day when the Union raised an Industrial Dispute 'against the management, the Top brass officials under the managements such as G.M./AGM etc. got annoyed, the services of the deponent were terminated on 13.07.2006 by Sh. S.K. Aggarwal (Manager) by uttering a few words that the services of the deponent are not required any longer.

7. That the termination of the services of the deponent without complying the provisions of 25 F of Industrial Dispute Act., 1947 amounts to wrongful termination which is void ab-initio.

8. That during the terms of employment under the management, the deponent used to work under different Executives, since the services of the Executives used to be transferred from one branch to other or one Region to another, but the duties of the deponent were never changed or remained same till the date of illegal termination. It is correct to state that the sudden transfer of bank officials neither changed the character of the deponent nor made any alteration in the working condition of deponent in any manner.

9. That the deponent used to get wages from the Branch itself on vouchers, but the mode of payment of wages had been changed by the management immediate after receipt of Charter Demands on behalf of workmen.

10. That the management having its own policy to regularize the services of the Car Drivers and in pursuance of the same policy, the services of one Car Driver

Sh. Sanjeev Kumar S/o Sh. Roshan Lal got regularized w.e.f. 09.06.2007 out of several claimants and he was designated as Driver-cum-Peon, whereas left the other workers without any reason.

11. That the wrongful termination on the part of management is an attempt to demoralized the other claimants who are strongly participating the proceedings before the Hon'ble Court in the matter of Regularization.

12. That there a re sanctioned post of personal card drivers under the management and even prior to giving employment to any candidate, the concerned Executive used to take approval from the Head Office i.e. management No. 2. and the candidature of the new aspirant used to be scrutinized by the management No.2.

13. That the deponent had served on the demand notice to both the managements under Regd post which were received by them. The copy of demand notice, postal receipts and acknowledgement card are Exh. WW-1/1 to WW-1/5 respectively, The deponent used to draw his wages on vouchers and the photocopies of cash vouchers are Exh. WW-1/6 to WW-1/21 (The original vouchers are in the possession of the management.

14. That the deponent is out of job since the date of his illegal termination and despite of his best efforts to secure gainful employment elsewhere, he could not get succeeded.

Workman on 22.11.2011 tendered his affidavit as WW1. He was cross-examined on same day by Ld.A/R for the management, Ms.RanaArora.

Management in support of his case filled affidavit of Sh. Anjani Kumar in his evidence. Wherein he stated as follows:-

1. That I say that I am presently working as Assistant Manager, Corporation Bank, Zonal Office, Kasturba Gandhi Marg, Connaught Place, New Delhi, I say that I am conversant with facts of these case on the basis of records maintained by the bank. As such, I am competent to depose upon this affidavit.

2. I say that there is no cadre of "Driver /Personal Car Driver" as per the respondent bank's policy.

3. I say that there is no post of personal car Drivers in the respondent Bank. The executives of the bank are engaging the services of car drivers in their personal capacity and amounts paid by them to these car drivers, are thereafter reimbursed by the respondent bank to the executive concerned. The petitioner was not employed by the respondent bank at Zonal Office, Karol Bagh, New Delhi and no appointment letter was ever issued to him by the respondent bank.

4. I say that the respondent bank however allows certain allowances commonly known as perquisites to the

executives to facilitate them to privately engage a driver. Such executives, who engage drivers in personal capacity claim reimbursement of the amount paid to personal car drivers. The Petitioner was engaged as 'Personal car Driver' by the executive concerned and since the petitioner was the personal driver he continued in his service till the said executive liked his services. The Petitioner was never included in the army of employees working with the respondent bank and therefore there is no question of his illegal/wrongful termination by the respondent Bank.

5. I say that the respondent bank has no control over the engagement of the car driver by the executive concerned and there is no relationship of employee and employer between the personal car driver engaged by the executive and the respondent bank.

6. I say that the respondent bank has no role in the selection and engagement of personal car drivers of the executive concerned. Accordingly the petitioner was also engaged by the executive concerned in his personal capacity and the respondent bank had no role in his selection & engagement by the executive concerned. The petitioner was not subjected to normal recruitment process for selection of workman as per the rules of the respondent bank.

7. I say that petitioner had not undergone the normal recruitment process prescribed for selection of workman in the respondent bank. I say that whenever the vacancies of sub-staff arise, either permanent or temporary, such vacancies are fulfilled by following the laid down procedure in this regard. The very fact that the petitioner has not undergone such procedure shows that he is not recruited by the respondent Bank.

8. That I say that petitioner never used to mark his attendance in the attendance register maintained for the employees of the bank and he was never issued any identity card by the bank.

9. That I say that I am not deposing falsely.

His affidavit was tender on 02.01.2012. He was cross-examined on 01.03.2013.

His examination in chief and cross-examination is as follows:-

I tender my affidavit as evidence which is Ex-MW1/A • It may be read in support of the case of the management.

XXXX By Sh. S.B. Shailey, A/R for the claimant.

The bank has not been able to produce the documents, in compliance of order dated 11.04.2012. I have no idea whether the claimant was engaged as a car driver of the bank at its Karolbagh branch on 01.11.1999. I have no idea that his services were terminated by the bank on 13.07.2006. It is incorrect that the claimant raised a charter of demand, which act annoyed the management and his

services were abruptly terminated. It is correct that concerned executive seeks permission from the Head Office of the bank to engage a particular person as his personal driver. It is also correct that the concerned executive is supposed to transmit bio-data, photographs, driving license, address proof as well as age proof of the particular person whom he wants to engage as a personal driver. It is correct that Head Office of the bank ratifies the decision of the concerned executive, but it is the decision of the concerned executive to engage a particular person as his personal driver. Vol. Concerned executive should fulfill the parameters issued by the Head Office in that regard.

It is incorrect that the claimant was engaged as a personal driver against a sanctioned post. It is incorrect that the bank had intentionally not produced vouchers and log book pertaining to this case. It is correct that log book of a vehicle can establish that a particular driver had worked on a particular day, in a particular month as well as in a particular year. I cannot affirm or deny that the claimant had worked continuously for 240 days in every calendar year, with the bank. It is incorrect that there is a post of driver in the bank. Vol. post of Peon-cum-Driver has been recently sanctioned in the bank. Circular Ex. MW1/W1 is not disputed. It is correct that wages of the claimant were paid through vouchers for actual days of work. Again said, concerned executive used to make payment of the claimant. Concerned executive get payment from Head Office and then pay it to the personal driver engaged by him. I am not in possession of any document now which may show that payment of his wages was made by the concerned executive.

Overtime allowance is paid to a personal driver. Outstation allowance and night halt allowance is paid to a personal driver. These allowances are paid to the personal driver by the concerned executive. Vouchers, copy of which are Ex. WW-1/6 to Ex. WW1/19 are not disputed. In case claimant would satisfy the policy of the bank for absorption, service would be given to him and otherwise not. It is correct that bank does not maintain any service record in respect of personal drivers. Correct address of Zonal Office of the bank is written on Ex. WW1/1, Ex. WW1/2, Ex. WW1/3, Ex. WW1/4 and correct address of Head Office is written on Ex. WW1/5. It is incorrect that my affidavit is based on false facts. It is further incorrect that claim put forward by the claimant is legal and justified.

Workman on 26.07.2011 submitted written arguments which are as follows:-

The case of the workman Sh. Narender Bahadur Singh is that he was employed by the aforesaid management No. 1 and he was placed at Karol Bagh, Delhi as Driver w.e.f. 01.11.1999 on sanctioned post, however no letter of appointment ever been issued to him. His last drawn wages were Rs. 5000.00 per month. The services of

the workman stood terminated on 13.07.2006 by the manager Sh. S. K. Aggarwal without any cause of action or notice by uttering a few words that the services of the claimant are not required any longer.

The bone of contention between the parties was that the workman along with other workmen had raised a Charter of Demands for the regularization of their services and the management got irked upon them.

It is the case of the workman that he used to get wages from the Bank directly on vouchers, but the mode of payment of wages had been changed by the management immediately after receipt of Charter of Demands on behalf of workmen.

The workman had also served a demand notice through Regd. Post which was received by the management in Head Office as well as in Zonal office/Karol Bagh, but failed to respond the same. The workman had also relied upon the demand notice, postal receipts, acknowledge cards and cash vouchers which are already Exh. WW-1/1 to WW -21.

Case of the management:

The defense of the management is that the workman was engaged as personal Car Driver by an executive and denied the relationship of master and servant between the parties, however the management never disclosed who was the Executive appointed the claimant as personal Car Driver.

Issue No. 1 and 2:-

The workman has filed his evidence by way of affidavit and thereafter the matter was fixed for cross examination of workman, but the management did not turn up on the date of hearing. As a result of non appearance on the part of the management, the Hon'ble Court proceeded the management ex-parte and accordingly the case has been reserved for Award.

Since, there is unrebuttal testimony on the part of workman, hence the workman has been proved his case without any clouds.

It is pertinent to mention here that the workman had placed certain photocopies of the Cash Vouchers in his evidence and when the Hon'ble Court granted the opportunity to the workman to lead secondary evidence, immediately after the permission, the management submitted the original vouchers in the Courts, meaning thereby the management still concealing the documents from the Hon'ble Court deliberately.

So far as concerned of continuous service, the workman has successfully discharged his initial burden to prove that he had worked more than 240 days in each calendar year by not only pleaded in his Statement of Claim but also deposed in his Affidavit which is still unrebuttal testimony.

It is pertinent to mention here that when the workmen had received wages on the number of occasions from the Bank directly then the question of denial of relationship with the management does not arise and accordingly all the objections raised by the management are liable to be thrown out at the threshold.

The Burden to prove that "Whether the workman was employed by a particular Executive" lies upon the management, but neither the management disclosed the name of any Executive in their Written Statement nor led any evidence on this point, meaning thereby the management had failed hopelessly to substantiate their stand before the Hon'ble Court.

If it is presumed for the sake of arguments, though not admitted, had the workman engaged by any so-called Executive as personal car Driver, in that eventuality the workman would have received wages from the concerned Executive not from the Bank directly.

It is submitted that since 1999 till 13.07.2006, the workman had obtained wages on vouchers regularly and the management is concealing this facts from the Hon'ble Court, just to frustrate the claim of the workman. The photocopies of vouchers which were in the possession of the workman has already been filed by the workman.

CASE RELIED:

1. Bank of Baroda V/s. Ghemarbhai Harjibhai Rabari (2005) 10 SCC 792)

2. Creative Garments V/s. Kunwar Prasad and Another (2003-1-L.L.J. P 809.)

RELIEF:-

The workman had successfully proved his case and he is entitled to be reinstated in the past service.

It is humbly and respectfully prayed that the Hon'ble Court may be pleased pass an Award in favour of the workman and against the management and direct the management to reinstate the workman back on duty with full back wages.

Workman on 21.8.2013 again submitted written arguments alongwith photocopies of ruling which are as follows:-

The case of the workman is that he was employed by the aforesaid management as a Driver w.e.f 01.11.1999 on sanctioned post and he was placed on duty at Zonal Office Karol Bagh Delhi, though no letter of appointment had ever issued to him. His last drawn wages were Rs. 5000/- per month at the time of cessation of employment.

Further, when the Union on behalf of all Drivers/workmen raised Charter of Demand for regularization of service, the top brass officers under the bank such as

General Manager /Assistant General Manager got annoyed upon each driver including the claimant and in a retaliatory action, the services of the workman were terminated on 13.07.2006 by Sh. S. K. Aggarwal (Manager) by uttering a few words that the services of the workman are not required any longer.

Furthermore, initially the workman used to get wages directly from the Bank on vouchers, but he mode of payment of wages were got changed by the management immediate after receipt of Charter of Demands on behalf of the workmen.

Feeling aggrieved by the illegal termination, the workman had left no option, but to initiate legal proceedings against the management and accordingly the workman sent a demand notice through Union to the management and thereafter filed his Statement of claim before conciliation officer-cum-ALC @ Delhi. The management also participated in the conciliation proceedings, but due to indifferent attitude on the part of management, the conciliation proceedings proved failure, hence this reference.

The workman led his evidence by way of affidavit and also relied upon documents which are exhibited as WW-1/1 to 21. The relied documents were proved beyond reasonable doubts, since the AIR for management never disputed the relied documents during the course of cross-examination.

Case of the management:

The defence of the management is that the workman was engaged as personal Car Driver by an Executive, hence the claim of the workman is liable to be dismissed.

ISSUES:

- (i) Terms of reference.
- (ii) Relief.

Legal Appointment:

In order to prove that the workman was appointed on sanctioned post, he had not only pleaded in his claim but also filed his evidence by way of affidavit in support of his claim, hence the workman had discharged his initial burden.

On the contrary, the onus of proof shifted towards the Bank and where no evidence at all is led on the question of disputed fact (i.e the initial appointment of workman as a personal Car Driver) by the management, in such a contingency, the management on whom the onus lies to prove a certain fact must fail.

Even otherwise, the management failed to disclose name of any executive under whom the workman had worked, since the case of the workman is that he used to

work under different executive, but his duties remains at the same position and sudden transfer of the executive never altered the condition of work in any manner.

The management s had produced Sh. Anjani Kumar. (Manager) as MW-1 who deposed on 01.03.2012.

"It is correct that concerned executive seeks permission from the Head Office of the Bank to engage a particular person as his personal driver. It is also correct that the concerned executive is supposed to transmit bio-data, photographs, driving license, address proof as well as age proof of the particular person whom he wants to engage as a personal driver. It is correct that H.O. of the Bank ratifies the decision of the concerned executive, but it is the decision of the concerned executive to engage a particular person as his personal driver."

It is pertinent to mention here that it was the practice prevalent under the management to seek permission from the Head Office prior to engagement of Car Driver. Accordingly, the concerned executive used to forward copy of Bio-data (Resume) of the Driver, 3 copies of photographs, driving license, Address proof and age proof etc.

After having securitized the set of documents, the Head Office used to ratify the act of the concerned Executive, meaning thereby the H.O. not only sanctioned the post, but also ratified the initial appointment of the Car Driver by the concerned executive. The rectification was nothing but mere a different mode of giving sanction to the post of Car Driver, hence H.O. was having direct control over the initial appointment of the Car Driver. The Legal meaning of ratify says that "to approve and accept formally. It means to confirm by expressing consent, approval or formal sanction".

Relationship of master and servant:

So far as the date of appointment of the workman is concerned which was never disputed by the management. Secondly, the management had also admitted the casual relation with the workman through executive, whereas failed to disclose the name of nay executive by which the management admitted casual relationship with the workman.

The management failed to disclose the name of nay executive who might have appointed the workman at any point of time, however the workman disclosed this fact during his cross-examination that he was appointed by Sh. M.B. Prabhu Chief Manager. The management has failed to produce Sh. M.B. Prabhu before the court to prove that the workman was appointed by him in his personal capacity and also paid wages to him.

The workman had relied upon two photographs which are exhibited as WW-1/20 and 1/21. On deep perusal,

the photographs transpire that the top brass executive under the bank presented a Gift to the workman in their own programme. The question does arise here as to why the gift was presented directly to the workman by the Bank's executive in their official programme, when the bank had no relation with workman. At the most, the gift was supposed to be presented to the concerned executive directly had he done anything for the bank.

Pay Master:

The management had pleaded in their written statement that the workman had never received any salary/wages directly from the respondent bank.

The version of the management is quite contrary to the proved documents. The workman had produced few cash vouchers which were available with him and the same were exhibited as WW-1/8, 1/9, 1/10/, 1/12, 1/14, 1/16, 1/17, 1/18 and 1/19.

It is pertinent to mention here that the wages being paid to the workman directly by the Bank from time to time. The cash vouchers were never disputed by the bank at any point of time with regard their genuineness or no payment was made to the workman on cash vouchers.

The management failed to produce any contrary evidence to rebut the payment schedule during the trial. Even, the workman was also paid late sitting and overtime allowance directly by the bank vide cash voucher which is exhibited as WW1/15.

Case Reference:-

1. Bank of Baroda V/s. Ghemarbhai Harjibhai Rabari (2005) 10 SCC 792.

The Hon'ble Supreme Court of India held that when no evidence was led by the Bank to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman, hence the question of workman further proving his case did not arise because there was no challenge at all to his evidence by way of rebuttal by the bank. Copy of Judgment is attached.

Law of Evidence:

According to Section 134 of The Indian Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact.

ADVERSE INFERENCE:

In fact, the workman produced those payment vouchers which were available with him between the periods of 2001 to 2005, however the application of the workman was also allowed on 18.05.2011 for calling upon original documents such as copies of wages records from 01.04.2003 to 30.06.2006.

In spite of specific direction of the Hon'ble Court, the management neither produced complete summoned records nor shown any cogent reason, hence an adverse inference may kindly be drawn against the management who willfully concealed the vital piece of evidence from the Hon'ble Court.

BURDEN TO PROVE 240 DAYS IN EACH CALENDAR YEAR:-

Admittedly the management has not disputed the date of appointment and termination of the workman. On the Contrary, the workman not only pleaded in his claim but also filed an affidavit stating the fact that he had worked more than 240 days in each calendar year, as such the workman had successfully discharged his initial burden.

In order to prove continuity in service, the workman had moved an appropriate application for calling upon the Logbooks of two official cars for the period of 01.04.2003 to 30.06.2006 which was allowed by the Hon'ble Court and thereby caused the management to produce the same before the Hon'ble Court. The management failed to produce Logbooks before the Court and in the absence of Logbooks, the workman is unable to prove that he had worked on a particular day and month, since the Logbooks are vital piece of evidence which keeps record of attendance of the workman.

MW-I Sh. Anjani Kumar himself admitted during his cross-examination, that the management does not maintain any service record in respect of personal drivers. He further admitted that "It is incorrect that the bank had intentionally not produced vouchers and log book pertaining to this case. It is correct that log book of a vehicle can establish that a particular driver had worked on a particular day in a particular month as well as in a particular year. I cannot affirm or deny that the claimant had worked continuously for 240 days in every calendar year with the Bank."

Case Reference:

2. R.M. Yellatti V/s. The Assistant Executive Engineer JT 2005(9) SC 340.

The Hon'ble Supreme Court of India held that "in the light of failure of the management to produce the muster rolls when summoned to do so, the award of reinstatement as upheld by the single Judge was correct and its reversal by Division Bench in correct."

3. Automobile Association of Upper India V/s P.O. Labour Court II and Anr. (2006 LLR 851)

The High Court of Delhi held that "engagement and appointment in service can be established directly by existence and production of appointment letter, written agreement or by circumstantial evidence of incidental and

ancillary records, in nature of attendance register, salary register, leave record, deposit of PF contribution, ESI, Etc.

Legal Objections:-

1. According to order VI Rule 15 of Code of Civil Procedure, every pleading shall be verified at the foot by the party or by one of the parties pleadings or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

Admittedly, the written statement has never been signed and verified by the competent authority and in the absence of specific verification at the foot of written statement, the defence of the management is liable to be rejected.

2. According to Section 35 B of Code of Civil Procedure, the payment of cost shall be a condition precedent to the further prosecution of the defence by the defendant where the defendant was ordered to pay such costs.

Right from the beginning, the management has been trying to linger on the proceeding by one pretext or the other and the Bank was penalized by the Hon'ble Court with minor costs at different stages from time to time, but the management never honored the direction of this Court and failed to pay the imposed costs willfully.

It is well settled law of land that if any party to the proceeding failed to pay cost to the opposite party which was imposed on the party at time of seeking adjournment, the every purpose of seeking adjournment for which the cost was imposed may not be read in the proceedings or the defence of the defendant/management is liable to be struck off. Total unpaid cost is Rs. 3100.00 (on 04.03.2009 Rs. 1000.00, on 22.11.2011 Rs. 200.00 on 12.03.2012 Rs. 800.00, on 22.08.2012 Rs. 300.00 and on 05.11.2012 Rs. 800.00).

3. The MW-1 Sh. Anjani Kumar deposed in his affidavit that there is no cadre of "Driver /Personal Car Driver" as per the respondent Bank's policy. The above deposition is self contrary to the admitted document i.e. Circular EXh. MW1/W1. The subject of the circular itself suggests that the management has been supplying shoes and socks to electricians and Drivers.

Relief :

Keeping In view the above facts and circumstances, the Hon'ble Court may be pleased to pass an award in favour of the workman and against the management while directing the management to reinstate the workman back on duty with full back wages alongwith consequential benefits.

Management on 12.09.2013 submitted written arguments which are as follows:-

1. By way of this claim petition has raised dispute against the respondent bank seeking direction from this Tribunal for his reinstatement on duty with the respondent bank with full wages and consequential benefits.

2. The main contention of the petitioner claimant was that he was working as driver under the driver control and supervision of respondent bank for number of years in the respective branches of respondent bank at Delhi against the sanctioned post and has been terminated by respondent bank without complying the provisions of section 25 F of Industrial Disputes Act.

3. The respondent bank contested the claim set up by the petitioner by denying the employer employee relationship. In reply to the contentions of claimant, the respondent bank had categorically stated that petitioner was never employed by the respondent bank and there was no employer- employee relationship between claimant and Management. There is no cadre of 'Personal Car Driver' in the Respondent Bank . Personal Car Drivers are in fact in the personal employment of the officials of the Bank who are working as Regional/Zonal Heads for sometime and who are made available certain allowances, commonly known as perquisites, to facilitate the use of cars provided to them for use as per bank's guidelines.

5. Nevertheless the expenses for maintenance, petrol and oil requirements, all fell within financial responsibility of the Bank. The high level officials are free to engage the services of Drivers or others for fulfilling the needs for which allowances are meant. Since the car drivers are engaged by the executive concerned in his personal capacity, these personal car drivers are not subjected to normal recruitment process for selection of workman as per rules of public appointment. There is no maximum or minimum age or qualification or working hours are prescribed by the Bank for the selection of the Driver by the Executive Concerned and bank has no control whatsoever on the working of personal drivers.

6. It has further been pleaded by the respondent bank that since there is no relationship of Master and Servant between the bank and the Personal Car Drivers, the Petitioners serving as personal drivers to the respective executives of the Bank cannot claim, as a matter of right, to be the employees of the Bank, even when car belongs to the Bank and Driver's pay is reimbursed to the Executives under the head 'allowances' on the basis of scale set by the bank from time to time.

7. It is pertinent to mention that the claimant, amongst others, was engaged as 'personal car drivers' by executive concerned. The petitioners was never included in the army of employees working with the bank , therefore there is no question of their illegal/wrongful termination.

8. As a matter of fact all the employees of the Bank including temporary employees are issued with

appointment letters and are required to sign the attendance register. Moreover wages of the temporary employees are also directly paid by the Bank and the employees of the Bank are amenable to discipline under Bipartite settlement applicable to them, which is not so in the case of Petitioners, who are 'Personal Car Drivers'.

9. It is pertinent to mention here that whenever the vacancies of sub-staff arises either permanent or temporary such vacancies are notified to the local employment exchange and after obtaining the panel of candidates fulfilling the eligibility criteria are called for interview and selection is made by the committee, consisting of panel of officials of prescribed cadre and recruitment de hors rules and regulations of the bank is not valid in the eyes of law. Such an appointment if any, is against the public policy for employment. Hence, there is no question of absorption of petitioners in the employment of bank de hors the rules for banking recruitment.

10. Furthermore, there is no sanctioned post of personal car driver. The executives of the bank are engaging the services of personal car driver in their personal capacity and the amount paid to these personal car Drivers are charged under the head of Miscellaneous /General Charges. Neither any appointment letter nor any termination letter was ever issued to petitioners. Moreover, engagement and appointment in service can be established directly by existence and production of an appointment letter, written agreement or any circumstantial evidence incidental and ancillary records which would be in nature of attendance register, salary register, leave record, deposit in provident fund contribution etc, which can be produced and proved by the workman. [Reliance placed on Judgments passed by Delhi High Court in Sanjiv Kumar Vs. Ramwa Chit funds (P) Ltd. reported in 130(2006)DLT 170 and in Mudra Communications Ltd. Vs. Ganesh Kumar & others reported in 169(2010) DLT 481.]

11. The claimant Sh. Narender Bahadur in support of his claim of regularization of his services with the respondent bank, filed his evidence by way of Affidavit. Petitioner relied upon certain payment vouchers allegedly paid by the respondent bank. However, bare perusal of the said payment vouchers reveals that amount paid to the personal car drivers of executives were charged to the General/miscellaneous charges account. As a matter of fact amount paid to personal car Drivers by debiting general expenses account was nothing but the reimbursement of amount expended by such drivers on car maintenance and the allowance made to the executives in form of wages being paid to such personal car driver in order to facilitate executive concerned to privately engage a driver for which perquisites/allowances are meant.

12. On being cross examined, petitioner corroborated the fact that respondent bank never issued any appointed letter to him for the job of car driver instead he had orally

been engaged by the executive concerned on the recommendation of his friend. He further stated that his name was not on the panel of sub-staff constituted by the bank. He was not issued any termination letter No. identity card as claimed by petitioner was ever issued by respondent bank. Further claimant/Petitioner Narender Bahadur has not adduced an iota of evidence on record to fortify his claim of being engaged by the respondent bank against the permanent sanctioned post.

13. On the otherhand, Sh. AnjaniKumar , Manager for the management filed his affidavit by way of evidence to depose the facts on behalf of respondent bank. He is his examination reiterated and fortified that as per the policy of the bank there is no sanctioned post of personal car driver and there is no employer employee relationship between respondent bank and the petitioner. Mr.Anjani Kumar further fortified that petitioner had not undergone normal recruitment process prescribed for the selection of workman in public employment and there is no question of absorption of personal drivers of the executive concerned in bank's employment de hors the rules for banking recruitment. Sh. Anjani Kumar was cross-examined and corroborated the fact that in the bank there is no post of driver whereas post of peon cum driver was sanctioned by the bank recently subject to the fulfillment of criterion /policy laid down by the bank.

Hence, the onus was on the petitioner to establish / prove employment which he fails to do. The petitioner has not place on record any document showing his employment with the bank. The contention of the petitioner that he worked under different executives would not establish the employer employee relationship with bank since there is likelihood that personal car driver employed by one officer may be engaged by his successor in office. Moreover, the petitioner in the instant case has already abandoned the service of personal car driver with the executive concerned on his own accord for a considerable period before raising dispute, therefore even otherwise also he is not eligible to complete for the job of peon cum driver sanctioned by the bank recently.

In view of the forgoing submissions, the petitioner failed to discharge the burden of proof for establishing a relationship of employment with respondent bank and further, petitioner is otherwise not fit to be considered for the post of peon cum driver with bank as he had abandoned the job for a considerable period before raising the instant dispute.

Thus, the present claim petition of the claimant Sh. Narender Bahadur be dismissed with heavy cost for being based on surmises and conjectures and devoid any substantial proof to fortify the claim of petitioner.

In the light of contentions and counter contentions I perused the pleadings of claim statement , written statement and rejoinder and evidence of parties including

principles laid down in the cited rulings by Hon'ble Supreme Court as well as by Hon'ble High Courts.

Perusal of pleadings of parties shows that it is admitted fact that workman Sh. Narender Bhadur Singh was employed as personal driver of car on 01.11.1999 by officer of Bank for vehicle provided to him by Bank. He remained in service upto 13.07.2006 exceeding 240 days. He was paid by officer concerned of Bank. Such payments made to him by officer of Bank have been reimbursed by Bank. Thus monthly salary of Driver Sh. Narender Bhadur Singh was indirectly paid to him by management Bank. Co-driver Sh. Sanjeev Kumar has been absorbed in service by Bank as Driver cum- Peon on 09.06.2007 but workman Narender Bhadur Singh has not been absorbed in service. Hence management violated the principle of equity etc. Management adduced no reliable and credible evidence. On the basis of which it could be presumed that workman Sh. Narender Bhadur Singh is not entitled to any relief and his case is distinguishable from the case of Co-driver Sh. Sanjeev Kumar workman Sh. Narender Bhadur Singh produced all possible evidence in the case. Hence workman Sh. Narender Bhadur Singh is entitled to relief as principle laid down in case of Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari (2005) 10 Supreme Court Cases 792 applies with full force. But what relief shall be provided to him is to be decided on the basis of settled law of supreme court on the point of reinstatement and back wages.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013) 11 LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated:-05/05/2014

HARBANS KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 25/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/105/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/105/2007 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
KANPUR**

Industrial Dispute No. 25 of 2008.

Between-

Sri Mohd. Wazid,
S/o Sri Mohammad Mustafa,
R/o ED-24 ADA Colony,
Naini, Allahabad.

And

The Assistant General Manager,
Bank of Baroda,
Regional Office,
Civil Lines, Allahabad.

AWARD

1. Central Government, Mol, New Delhi vide notification no. L-12011/105/2007 I.R. B-II, dated 07.01.2008, has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management of Bank of Baroda, in terminating the services of Sri Mohd. Wazid Messenger, with effect from 04.11.2006 is justified and legal? If not to what relief the concerned workman is entitled to?

3. Brief facts are –

4. It is stated by the claimant that the Naini Branch, Allahabad of the opposite party is under the control and supervision of Assistant General Manager, Bank of Baroda and he started working at the post of Messenger with effect from April, 2000. It is further stated by the claimant that the branch manager of the Naini Branch Allahabad, without any reason of ryhm stopped the workman from his work on verbal orders with effect from 04.11.2006. No notice, notice pay or retrenchment compensation was offered to the workman by the opposite party at the time of dispensation of his services. He has further alleged that in each calendar year he had rendered for more than 240 days of service. During the period of his employment with the opposite party neither there was any complaint against the workman nor was he ever issued any charge sheet. It is alleged that at the time of dispensation of the service of the workman juniors to him were working at the branch that are still in the employment of the bank. After dispensation of his service the workman made repeated requests oral as well as in writing for his employment before the management but all the times he was verbally assured by the concerned authorities of the bank but no written reply was ever given to him by the bank.

5. It is alleged by the workman that the dispensation of his services by the opposite party is wholly illegal and improper. The entire action of the opposite party is against the provisions of the Act. After termination of his services the workman could not get any employment despite of his best efforts and he is unemployed.

6. In the last on the basis of above it has been prayed by the workman that he is entitled to be reinstated in the service of the bank with continuity, full back wage and with all consequential benefits.

7. The opposite party has filed the reply refuting the entire claim of the workman on the ground that the opposite party bank is a public sector nationalized bank and is having its own recruitment rules and no person can be allowed to seek the employment without qualifying the recruitment process.

8. It is alleged by the opposite party that the workman was engaged purely on temporary basis to meet the exigencies as and when required. His engagement was for a specific work and for a specific period and the work entrusted to him when completed his engagement automatically came to an end and non renewal of the same is not retrenchment. As the workman was a daily wager hence the question of termination of his service or compliance of provisions of section 25 F of the Act does not arise.

9. The workman was engaged intermittently during the period from 06.05.2000 to 08.09.2004, purely on casual basis therefore, there does not exist any cause of action or alleged termination on 04.11.2006. He is not a workman as defined under section 2(s) of the Act. Workman has not worked continuously for 240 days in any calendar year; therefore, the workman is not entitled for any relief.

10. The workman was never the employee of the bank because he was neither appointed by the bank on any regular post, therefore, the claim of the workman is not maintainable and he is not entitled for any relief.

11. Rejoinder has also been filed by th workman but nothing new has been alleged therein.

12. Both the parties have filed the documents.

13. Workman has filed 25 documents vide list paper no. 8/1. These documents are paper no. 8/2-31.

14. Management has filed 10 documents vide list 15/1. These documents are paper no.15/2-11.

15. Both the parties have adduced oral adduced oral evidence. Whereas workman has adduced himself as Mohd. Wazid, opposie party has adduced M.W.1 Sri Ram Palat who is an officer of the bank. They have also adduced Sri Manglesh Dubey as M.W.2.

16. I have heard both the parties at length and perused the whole records.

17. It is a fact that the claimant was never appointed or engaged by following any regular procedure and his name was never called from employment exchange.

18. Both the witnesses of the management have specifically stated on oath that the claimant was engaged purely as a casual worker for intermittent work to bring the stationery etc. and to fetch water. He was never engaged after 08.09.04. Both the parties have filed the photocopies of the payment vouchers and these vouchers have been examined by me. Almost all the vouchers relate to the sundry charges i.e. repair and maintenance, stationery etc. These do not specify specifically that these vouchers have been issued in lieu of salary or wages.

19. I have also examined the statement of w.w.1. He has admitted in the cross examination that there is no documentary evidence of the work done by him relating to the period 09.09.2000 to November 2006. It is pertinent to mention that the cause of action in the reference order has been shown as 04.11.2006. Therefore preceding the 12 months from November 2006 to November 2005 there is no such documentary evidence from which it may be inferred that the workman had completed 240 days and more in a calendar year.

20. Initially the burden lies on the workman to prove the fact that he had completed 240 days, but according to the evidence produced by both the parties it is clear that the workman has failed to prove the fact that he had worked continuously for 240 days preceding the date of his termination.

21. The workman has relied upon a decision (2011) 2 SCC (L&S) 153, Devender Singh versus Municipal Council Sanaur.

22. I have respectfully gone through the principle laid down by the Hon'ble Apex Court, but considering the facts and circumstances of the present case, I am of the view that the workman cannot take any benefit from this decision.

23. I have examined the contention of the workman that the opposite party did not file the relevant documents relating to the period 2005-06. I do not find that there is any malafide intention of the opposite party in withholding the records because the opposite party, their witnesses have specifically stated that the workman did not work during the period 2005-06. This fact can also be relied because when the workman himself is filing all the related vouchers etc. then he could have also filed the other entire document relating to the period 2005-06, but there is no such document which may prove that the workman has completed 240 days of continuous working. Therefore, the workman has miserably failed to prove his case.

24. Reference is therefore, decided against the workman and in favour of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 16/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/86/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/86/2008 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, KANPUR.

Industrial Dispute no. 16 of 2009

Between :

The Secretary,
Punjab National Bank Workers Union,
128/F/75 Kidwai Nagar,
Kanpur

And

The Assistant General Manager,
Punjab National Bank,
Regional Office,
Birhana Road,
Kanpur

AWARD

1. Central Government, Mol, New Delhi vide notification no. L-12011/86/2008-IR(B-II) dated 05.02.09 has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management of Punjab National Bank in not filling up the vacancies of sub cadre staff amongst the eligible sub staff of the bank in spite of clear instruction from the Government, HO is just and proper? What relief can be provided to the deprived sub staff?

3. Brief facts are-

4. This claim statement has been filed by the Secretary, PNB Workers Union. It has been stated that the service conditions of the bank employees are governed by Sashty Award as modified from time to time by subsequent Bipartite Settlements (in short BPS). The provisions of these settlements have a binding force. This fact has been admitted by both the parties. Clause 14.3 of BPS dated 31.10.89 provides for giving preference to part time employees for filling full time vacancies in the subordinate cadre, a copy of the said provision has been enclosed as annexure 1. It is further stated that the Government of India has been committed for all round

development of Schedule Caste and to bring them into the main stream of national life and ensured their full participation in socio economic development of the country and for this purpose the Government has even amended the constitution of the country besides different legislature enactments, instructions etc. Government of India has issued various guide lines time to time in this regard. As per GoI guide lines 25% of vacancies accruing in the subordinate cadre should be reserved for being filled up from employees engaged in sweeping and cleaning of the branches. The GoI in order to increase the representation of SC and ST candidates in the services under the GoI has taken various measures as such the Department of Personnel & Training vide its notification no. 36012—dated 22.05.89 conveyed the decision of the Government to all Ministries and Departments of GoI that in cases of direct recruitment to vacancies in posts under Central Government the SC/ST candidates who are selected on their own merit without relaxed standards along with candidates belonging to other communities will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC/ST candidates which will thus comprise SC/ST candidates. A copy of such notification number has been enclosed. Thus an obligation is caste upon the bank to notify the vacancies arising in the subordinate cadre by issuing circulars and bringing it in the notice of part time sub staff employees giving therein bank recruitment rules and inviting applications from the eligible employees and if such eligible employee exists in the part time sub staff employees, the bank is bound to appointment them as peons by giving preference over other general candidates sponsored by employment exchange or any other source. As such large number of vacancies exists in various branches of the bank owing to known recruitment of subordinate cadre for the last so many years due to promotion of sub staff in the clerical cadre, retirements, death etc. There are part time employees in the subordinate cadre who fulfill the criteria for appointment in the subordinate cadre fixed for general candidates and who are liable for preference in terms of mandatory provisions of BPS. Such appointment by preference do not come within the ambit of reservation of 25% of vacancies in view of the decision of the GoI vide notification no. 36012 (supra) and such employees are already working as peon in permanent and regular vacancies of subordinate cadre. There are other types of part time employees which fulfills the criteria for conversion into full time in terms of GoI guide lines as they are sufficiently literate to read Hindi and English and liable to be converted as full time subordinate cadre.

5. The management of PNB in order to exploit the persons coming from SC/ST category and in order to forfeit the main purpose of the policy of the GoI has created an artificial cadre by inserting the words Sweeper in their

designation whereas there is no sweeper cadre under the provisions of BPS and these employees belong to subordinate cadre and they are being paid scale of wages meant for subordinate cadre. The management of PNB in order to deprive the preference provided in the BPS to such part time employees of the bank who are working in the bank and are otherwise eligible for appointment as full time subordinate staff as they full filled the criteria fixed by the bank for direct recruitment has never issued any circular inviting application from such employees. The bank has neither published any advertisement in news paper. Instead the bank has made recruitment behind the back of such employees through employment exchange. Thus not only mandatory provisions of BPS have been violated but also these employees have been deprived of the benefits for which they are lawfully entitled. The Bank in order to forfeit the main aim of the policy of the GoI, is changing the duties and designation of full time sweepers of the bank by giving them designation of the peon to the extent of 25% of the vacancies in the subordinate cadre and notifying the government that its direction for reservation of 25% of vacancies have been complied.

6. It is further stated that section 9-A of the Act, the 4th Schedule restricts the ordinary right of the employer and provide that no employer can reduce the number of employees in any organization, branch or shift without giving any notice to the effected employee in the prescribed manner, but the management of the PNB is continuously reducing the number of subordinate employees without following the prescribed procedure. The truth has come out from the only information provided to them during the course of conciliation proceeding before the RLC© Kanpur. The management produced a copy of letter no. HRD:....May 18th 2006, written by Chief Human Resource Development Division Head Office New Delhi, to Zonal Manager, Zonal Office, Lucknow. As per this letter there were 16 branches in erstwhile Lucknow Zone alone where not even a single peon was working. Exactly the same situation is persisting in various branches of the bank and these part time employees are working in permanent and regular vacancies of full time employee without payment of full time wages to them. It is further stated that in identical situation SBI, Bank of India, Allahabad Bank has taken proper measures to do justice with these persons coming from the lowest stata of the society. The copy of such decisions taken by these banks have been filed as annexure 3-A, B and C, wherein SBI has converted all part time employees in the service of the bank as on 31.12.005 as full time employees.

7. Thus the opposite party bank has exploited these employees coming from lowest stata of the society in as much as that neither it has given preference to eligible part time sub staff employees in terms of the provisions of the BPS nor it has converted such part time employees

who are sufficiently literate to read Hindi/English or regional language as per GoI guidelines. This practice has been adopted by the management of the bank during each successive process of recruitment over the years.

8. Therefore, the Union has prayed that all full time employees in the subordinate cadre having sweeper designation must stand designated as peon immediately; that all part-time employees who were in 3/4th scale of pay as on 31.12.2005 must stand converted to full time scale with effect from 01.01.2006 in line with SBI; All part time employees in half scale of pay as on 31.12.2005 must stand converted to full time scale with effect from 01.02.2006 in the same manner as done by SBI; All part time employees in 1/3rd scale of pay as on 31.12.2005 and on fixed wages must stand converted to full time scale with effect from 01.04.2006 in line with SBI.

9. All part time employees who are 8th pass i.e. the qualification prescribed by the bank for direct recruitment must stand converted to full time from the date they have secured such qualification.

10. Opposite party has filed the written statement. They have raised initial objections like that the reference is not properly and validly espoused, as such it is not an industrial dispute. It is further said that this union is not properly authorized to raise the dispute.

11. It is an admitted fact that the service conditions of the workmen staff are governed by the provisions of Shastri Award, Desai Award and Bipartite Settlement. Bank has entered into settlement dated 07.05.84 with majority of union i.e. AIPNBF before RLC© in regard to the fixation of wages of part time employees (sweepers) in the subordinate cadre and related matters. In terms of the said settlement which has been circulated vide PD Circular 772 dated 17.05.84, the vacancies of part time sweeper in 1/2, 3/4th of full wages arising at the station where the bank has more than one office, on account of any reason shall be filled up on the basis of seniority determine by converting the services put in at 1/3rd 1/2 or 3/4th of the scale wages into full time service. This procedure of the filling of the vacancies is to be followed unless THIKANA system is in vogue at that particular area. The aforesaid circular also prescribed that the recruitment of part time / full time sweepers shall be as per eligibility criteria laid down by the bank from time to time. In terms of the clause 1 of the settlement following norms have been followed in fixing wages payable to part time employees (sweepers) in subordinate cadre. In the chart they have shown how the wages are being paid depending on the hours of work per week and the area to be swept.

12. The aforesaid settlement was not only binding upon the existing part time employee of the bank at the relevant point of time, but also upon the part time employees who joined the bank subsequently, the scale

wages of the part time employees have been revised from time to time. The contention of the union that part time employees are working in permanent and regular vacancies of full time employees without payment full wages to them. The contention is wrong as the wages of the sweepers were governed by the settlement dated 07.05.84 and BPS but now memorandum of settlement dated 27.04.2010 between the management of 46 banks as represented by the Indian Banks Association and their workmen as represented by the AIBEA, NCBE, BEFI and so on has come into operation wherein clause 21 relates to the wages of the part time employees and other related matters. In view of the aforesaid settlement which has also been signed by the INBEF to which PNB Workers union is affiliated. The contention so raised by the union in respect of the wages of the part time employees merits no consideration.

13. It is stated that the bank filled the vacancy of scale wages in terms of the settlement dated 7.5.84 as mentioned above, the vacancies of peon in the subordinate cadre are filled up by the bank in terms of the recruitment rules of the bank and the guide lines issued by the government from time to time. The bank has also reproduced the clause 14.3 of the BPS which has already been stated by the union in its claim petition. It is further stated that the government guidelines as conveyed by GI, Department of Pers & AROM number 42015/3/75 dated 16.01.76 as amended by OM no. dated 02.02.77 provide that after carefully considering the question relating to appointment of persons holding the post of sweeper etc. It has been decided that 25% of vacancies accruing in peon cadre should be reserved for being filled up by transfer from the cadre of sweeper etc, who have put in minimum of 5 years of service and who may not be possessing the qualification for direct recruitment for the post but may possess elementary literacy and give proof of ability to read either English or Hindi or regional language. Further it would be necessary to hold a simple written test. It has further been desired that Ministries / Departments are accordingly requested to amend the recruitment rules for the post of peons under them in consultation with said department to reserve 25% of vacancies occurring in the cadre of peons for appointment on transfer of sweepers as stated above.

14. That having regard to the government instructions the consolidated guide lines have been issued by the bank from time to time in respect of appointment of part time employees in full time vacancies in subordinate cadre as well as change of designations of sweepers etc, which include PD Circular no.22/99 dated 24.09.99. Clause (2) and Clause (6) of the aforesaid circular states as under-

15. The sweepers farrash/chowkidar etc drawing 1/3rd, 1/2nd and 3/4th of the scale wages who have completed 5 years of service after conversion of the same into full scale of wages as on 1st Jan. of the year in which vacancies

of the peon have been assessed shall also be eligible to be considered for absorption as peon in subordinate cadre. The principle for conversion of part time employees who are working on scale wages would be as under-

16. Sweepers on 1/3rd scale wages will get one years experience equal to full scale wages for every three years service.

17. Sweepers on 1/2nd scale of wages will get one years experience equal to full scale wages for completion of every two years of service.

18. Sweepers on 3/4th of scale wages will get three years experience equal to full scale wages for every 4 years of length of service. The eligible candidate shall be interviewed by a committee constituted by the bank either for internal candidate or along with the candidate for direct recruitment. The selected candidates will be placed in the panel for absorption against vacancies. The panel will be prepared on the basis of seniority of service as a part time employee. The seniority of part time employees who are drawing scale wages i.e. 3/4th and so on of subordinate scale wages may be determined by converting the years of service rendered in 3/4th and so on of the scale wages into full service. Thus the bank is filling the vacancies of peon by way of conversion from the cadre of sweeper farrash etc. Further filling up the vacancies of peon by way of recruitment is governed by recruitment rules of the bank and guide lines issued by government of India from time to time. In terms of the guide lines issued by the government recruitment in subordinate is made through the medium of employment exchange. In the present so called dispute Union has contended that the bank should notify the vacancies arising in the subordinate cadre by issuing circular and bring it to the notice of part time sub staff employees giving there in banks recruitment rules and inviting application from the eligible employees and if such employees exists in part time sub staff employees the bank is bound to appoint them as peons by giving preference over other general candidates sponsored by employment exchange or another source. The said contention is contrary to guide lines issued by the Government from time to time as if that would be the situation, no unemployed person possessing the eligibility criteria would have been appointed in the bank.

19. Lastly it has been alleged that the bank is following the recruitment rules and government guide lines in making appointments and conversions of the part time sweeper in to full time. Bank has not shown any discrimination in this regard nor has played any sort of unfair labour practice as such the claim of the union is devoid of merit and is liable to be rejected.

20. Union has filed rejoinder. It has been stated that dispute is an industrial dispute and the same has been referred by the Government considering it to be duly and validly espoused as per the requirement of the act. It is

again stressed that PNB has created a new cadre of sweepers farrash etc. within the subordinate cadre by inserting the work sweeper in their designation in utter violation of mandatory provision of Shastri Award as modified from time to time. It has been stated that full time sweepers, are those persons coming from the lowest strata of the society who have to put in many years of the service to reach this position right from consolidated wages to one third to one half and then three fourth of the scale wages. Only few lucky one can attain this position because it depend on availability of exceptionally large branch in the cities they are employed having carpet area of more 5000 sq. ft.

21. Part time sweepers are those who have been appointed as such and have attained the qualification prescribed by the bank for appointment as peon. Part time sweeper who has put in at least 5 years of service in the bank and who are literate enough to read Hindi and English or Regional Language.

22. Employees mentioned in first category are already drawing the same wages as their counterpart having designation of peon. There is just change in designation and nature of duties to be performed by them. Their designation is liable to be changed on the basis of simple interview or assessment of work to find out if they can perform the duties of peon. Otherwise also there are such position of peon in the bank which does not call for any such knowledge.

23. On factual side it has been contended that as and when vacancies of peon arise in subordinate cadre, the bank changes the designation and the nature of duties of first category of employees up to 25% of such vacancies and designates them as peon intimating the Government that its Guidelines have been complied. Bank fulfills next 25% of vacancies by means of appointing such drivers who have been engaged by the top executives of the bank. Rests of the 50% vacancies are being filled up by means of Employment Exchange without any notification though circulars or publications in New Papers. As a result part time employees in the subordinate cadre for whom provision have been made in the bipartite settlement and banks own circular as also guidelines issued by the government are being denied the benefits and privileges of such provisions and guidelines. In order to shatter the hopes of these employees the management has amended its recruitment rules and has changed the qualification from VIII pass to intermediate during the pendency of the present industrial dispute before the Hon'ble Authority. A number of clerks in the bank got promoted to the post of clerk from subordinate cadre with their qualification as High school; therefore, the bank wants an intermediate peon to work under High School pass clerk. For other two categories of employees provisions of bipartite settlement and government guidelines are being violated by the bank.

Most of these employees have already been performing the duties of peons in the leave gap arrangement without payment of wages of peon in the hope that one day they will be converted as full time employees. Thus these part time employees on one side while enhancing their educational qualification, they are also in continuous touch with the banking operations, which enable them to perform the duties of peon more efficiently and effectively as compare to those who will be recruited afresh as peon through employment exchange.

24. Apart from the above nothing new has been stated in the rejoinder filed by the Union on merits of the case.

25. I have heard the arguments at length and have perused the whole record of the case.

26. The Union has claimed that their case is based on the existing provisions of the BPS as well as circular and notification issued by Government of India, from time to time. These are annexure 1 and 2. They have placed reliance on the circulars and notifications issued by other banks like Bank of India which annexure 3-A, circular issued by State Bank of India, annexure 3-B and circular 3-C issued by Allahabad Bank.

27. Opposite party has also filed circular no. 22 of 99 dated 24.09.99 paper no.7/8-11.

28. Considering the facts I would like to reproduce the reference which is whether the action of the management of PNB in not filling up the vacancies of sub cadre staff amongst the eligible sub staff of the bank in spite of the clear instruction from the Government / HO is just and proper?

29. The opposite party has raised certain preliminary and legal / technical objection like that the reference is vague as there is no eligible sub staff.

30. I have gone through this contention. The provisions of the BPS clearly provide the category of eligible sub staff a copy has been filed by the opposite party as well as the union of the workers.

31. Provision of BPS 14.3 provides that parties further agrees that subject to bank recruitment if any part time employees in the subordinate cadre will be given a preference for filling full time vacancies in the same cadre other thing being equal, therefore it is clear and in my view these are the part time employees known to be the eligible sub staff to be considered for filling up the vacancies of subordinate staff. Similar terms have been provided in the circular filed by the opposite party i.e. part time sweepers who have put in at least 5 years of service in the bank and who are literate enough to read Hindi English or Local language.

32. Therefore, the contention of the opposite party that the reference is vague and there is no such eligible

sub staff, this contention is meaningless and there is no legal flaw to decide the present reference.

33. The Union has raised a very grave contention that while filling up vacancies in the subordinate cadre the opposite party has been calling the names only from employment exchange that also not in a fair way. These names are called on the back of these part time employees and they do not come to know when these vacancies are to be filled up. They have also raised a contention that the working in the employment exchange normally is not so fair and whosoever approaches their names are forwarded otherwise not. These part time employees may be registered with the employment exchange or not but they have no knowledge as to when their names have been sponsored or not for consideration of filling up the vacancies of full time peons. It is contended that their names were never sent from Employment Exchange hence they are being deprived for consideration to be appointed as full time peon in the service of the opposite party bank.

34. The Union has placed reliance upon a decision of the Hon'ble Supreme Court which is Civil Appeal No. A-7646-11724 of 66 arising out of SLP© no. 8590-8576 of 93, The Excise Suptd. Malikapattanam Krishna District Andhra Pradesh versus KVR Visheshwara Rao and other. It has been held by the Hon'ble Apex Court that it is a common knowledge that many a candidates are unable to have their names sponsored, though their names are either register or are waiting to be registered in the employment exchange with the result that the choice of selection is restricted to only such of the candidates whose names comes to be sponsored by the employment exchange. Under these circumstances many a deserving candidates are deprived of the right to be considered for appointment to a post under the state. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange and employment should sponsored the names of the candidates. In addition the appropriate department or under taking or establishment should call the names by publication in the news paper having vider circulation and also display on their office notice board or announce on radio, television and employment news bulletin and then consider the case of all the candidates who have applied. If this procedure is adopted fair play would be sub served. Equality of opportunity in the matter of employment would be available to all eligible candidates.

35. Considering the decision of Hon'ble Apex Court, Government of India DOPT has taken the cognizance and has issued the office memorandum no.14024/02/26-estt (D) GoI, Dopt. New Delhi dated 18.05.98.

36. The Government has issued the aforesaid circular. They have again emphasized that in addition to calling the names from employment exchange, the establishment may get the vacancies published by the publication

through Ministry of Information and Broad casting in addition to the above sub recruitment notices should be displayed on the office notice board for wider publicity. Therefore, these are the mandatory guidelines, which have acquired the shape of legal sanctity by the decision of the Hon'ble Apex Court as well as office memorandum issued by GoI.

37. Therefore, a question arises whether the management of opposite party bank is giving a due and wide publicity while filling the post of sub cadre staff from amongst the eligible sub staff employees of the bank.

38. Definitely the answer is no, as the opposite party has not been displaying the vacancies either on notice board nor circulating amongst the eligible sub staff, nor have published the same in any news paper of wider and fair publication.

39. The contention of the opposite party that if such wider publicity was given, then there would be a situation when no unemployed person possessing the eligibility criteria, would have been appointed in the bank.

40. I fail to understand how this doctrine of public expectation has been introduced by the opposite party in the given set of circumstances. There is a clear provision of BPS where part time employees are working for years together and they don't come to know when the management is going to fill up the vacancies of peons amongst part time employees. Therefore, it can be said that the opposite party is neither following the decision of the apex court (supra) as well as office memorandum GoI (supra).

41. In such circumstances I am of the view, it is expected and opposite party is directed that in future whenever they have to fill the vacancies of peons i.e. sub-cadre staff, they shall display the vacancies on the notice board of the concerned branch, notice board of the Regional Office, Zonal Office and on the notice board of the Head Quarter and they will inform part time employees who are working under them for years together that the vacancies are to be filled up, or they informed the union of the workers.

42. If there are mass vacancies, definitely they shall also give wide and due publicity through the employment bulletin of Government of India and Local News Paper so that it can be a fair exercise in the matter of providing employment and no one is being deprived of being considered for selection including the part time employees may be sweeper or otherwise. It has further been contended that Govt. of India in order to increase the representation of SC/ST candidates in the service under GoI has taken various measures and the department of DOPT vide its notifiatio no 36012/13/88 Estt. (SCT) dated

22.05.89 which is enclosure 2 has conveyed to all the government department and the Ministries that in case of direct recruitment to vacancies in post under Central Government SC/ST candidates who are selected on their own merit without relaxed standard along with candidates belonging to the other communities will not be adjusted against the reserve share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC/ST candidate which will thus comprised SC/ST candidates who are lower in merit than the last candidate on the merit but otherwise found suitable for appointment even by relaxed standard if necessary.

43. It is also contended that government of India has been committed for all round development of SC/ST who is the lowest stata of the society and to bring them in the main stream of national life and ensure their full participation in socio economic development of the country and for this purpose has amended legislation enactments etc from time to time as per guidelines of the government. 25% of the vacancies accruing in subordinate cadre should be reserved to be filled from employees engaged in sweeping and cleaning of the branches. But the bank as and when vacancies of the peons arise in the subordinate cadre the bank changes the designation and nature of duties of such employees who are already drawing the same wages as their counterpart having designation of peon are drawing. There is just change in designation and nature of duties to be performed by them and claim that 25% of such vacancies have been filled up and intimate the government that its guidelines have been complied with.

44. Therefore, it is contended that in the real sense 25% of the vacancies are not being filled up as per intent of the government of India circular dated 22.05.89.

45. Therefore, according to the facts and circumstances opposite party is directed that in future they will fill up 25% of the vacancy which are reserved according to the norms laid down in Government of India Circular dated 1989 and if someone may be part time employee may be designated as part time or otherwise, if he is selected of his own merit then his case shall be considered in the General Category and the vacancy which have been reserved for SC/ST and such vacancy shall be filled amongst eligible SC/ST candidate.

46. The next contention and prayer of the union of the worker is that there are specific provision in the Bipartite Settlement i.e. provision 14.3- Parties further agree that subject to bank recruitment rules if any part time employee in the subordinate cadre will be given preference for filling full time vacancies in the same cadre other things being equal.

47. There is also a provision that full time or part time employees as described in clause 1 and 2 of circular dated 24.09.99, which has been filed by the opposite party also as annexure 7/8-11, prescribes, would be eligible for consideration for absorption even if they may not possess minimum educational qualification prescribed for direct recruitment to the post but possess elementary literacy and give proof of ability to read English, Hindi, of any regional language.

48. It has been contended by the union that in real sense no such benefit is provided to such part time employees particularly to the sweepers, farrash etc. who belong to the lowest strata of the society.

49. Opposite party has contended that they are following the provisions of the BPS as well as instructions issued by the Government of India from time to time. They have also pleaded in written statement that according to government guidelines as conveyed by GI department of Personnel and AR OM No. 42015/03/75 dated 16.01.76 as amended by OMdated 02.02.77 provide that after carefully considering the question relating to appointment of persons holding the post of sweepers etc., it has been decided that 25% of vacancies accruing in peon cadre should be reserved for being filled up by transfer from the cadre of sweeper etc., who have put in a minimum of five years of service and who may not be possessing the qualification prescribed for direct recruitment to the post but may possess elementary literacy and give proof of ability to read either English or Hindi or Regional languages.

50. First of all I would like to say that the opposite party has not filed the aforesaid circular of the year 1976 (supra). For a moment if the contention of the opposite party is considered even then it prescribes that 25% of the vacancies accruing in the peon cadre should be reserved to be filled up by transfer from the cadre of sweeper etc., who have put in minimum of five years of service. If this circular has been placed then the tribunal could have been able to enter into the contents of the guidelines and direction issued by the Government. Simultaneously I would like to say that both the parties are also bound to follow the provisions of Sashtri Award and the Bipartite Settlement as amended from time to time and according to these provisions all the part time employees who are doing the work of like sweepers etc., have to be given preference while filling up the regular vacancy of peon. This has been contended by the union that under the same provision of the BPS the management of the other banks like Bank of India, State Bank of India, Allahabad Bank have already issued circulars like paper no.5/9-12 issued by Bank of India, Circular paper no.5/13-15, issued by State Bank of India and circular paper no. 5/16-18 issued by Allahabad Bank.

51. I have gone through these circulars. According to these circulars they have abolished the designation of sweeper. The management of State Bank of India, has now designated them general attendant instead of sweeper, canteen boy, Gardner etc. The State Bank of India has specifically written that the conversion of menial category of staff to messenger-ial category has been minimal in past few years due to various reasons like creation of full time vacancies of menial staff on account of new branches has also been declined in the recent years. These were the factors which has caused a situation where part time employees have almost no opportunities for their conversion to higher part time/full time scale of pay.

52. The part time employees will continue to draw low salaries and will retire after serving the bank for 30 years or more as part time employees drawing proportionally lower terminal dues including pension. As such the management of State Bank of India after discussion with the Federation laid down that the bank will convert all part time employees in the service of the bank as on 31.12.2005 in full time in three phases in order of their time scale of pay.

53. They have also laid down the phases for conversion i.e. all part time employees in 3/4th scale of pay as on 31.12.2005 will be converted to full time scale with effect from 01.01.06, similarly, part time employees in the half of scale of pay and in the one third scale of pay as on 31.12.05 will be converted to full time scale with effect from 01.02.2006 and 01.04.06 respectively.

54. Regarding the change of designation I have already explained above that the management of the State Bank of India and other Banks has already given a due thought that calling the part time employees under the designation of sweeper etc. may not look so good so they have changed their designation also calling them as general attendant, but after conversion they shall continue to perform their duties of their original designation like sweeper, canteen boy etc and in the remaining time they will perform menial duties etc. Similarly the Bank of India has also changed the designation and have converted all the part time employees giving a cutoff date as 31.12.2008.

55. A question arises whether the opposite parties have so far implemented the provision of the BPS and the guidelines of the Government of India issued from time to time in real sense.

56. The opposite party has not been able to place any such record before the tribunal wherein it can be inferred that the opposite party has followed the principles and guidelines as mentioned in the circulars (supra). Whether they are following the principles of natural justice in making recruitment while converting part time employees to regular peons they have not been able to produce any authentic data before the tribunal.

57. The Union has already contended that such conversion of part time employees has been on the back of such employees as they are never properly informed so they are being deprived of their benefits. Opposite party is calling the name from the employment exchange without informing such part time employees of the bank.

58. Therefore I have given due thoughts and consideration to each of the circular. The management of the other banks who are also sailing under the same boat have also followed the provision of BPS in real spirit and have given the actual benefits to the sweepers farrash etc, who were performing the menial work, so I am of the view, why the management of PNB cannot provide such aid to such part time employees who have put in five years and more service and who come from the lowest stata of the society.

59. The present case has been raised before Assistant Labour Commissioner (Central), Kanpur, in the year 2008.

60. Bank of India has issued its circular which is paper no.5/9-12 on 23.12.08, therefore, I am also of the view that the management of the bank shall follow and issue its own circular making a cutoff year 2008.

61. It is also contended by the Union that after raising the Industrial Dispute the management has unilaterally changed minimum qualification which was VIII pass for recruitment of direct peon to 12th class pass. I am of the view that when the industrial dispute was pending and what were the qualification at that time, that should not have been changed and all the part time sweepers are eligible to be considered on the basis of their qualification as they were possessing in the year 2008 or prior to that. There is another Industrial Dispute raised by the Union making the same prayer that i.e. under Section 33-A of I. D. Act and this I. D. No. 22 of 2009. This I.D. is also between the same parties.

62. In this I. D. the same prayer has been raised as has been raised in I.D. No. 16 of 2009. The union has sought that a direction be given to the management that while filling up the vacancies they should not adopt unfair labour practice and management should ensure compliance of mandatory provision of Section 9-A of Industrial Disputes Act.

63. Therefore, I am of the view that while filling up the vacancies the management is expected and directed to ensure the compliance of Section 9-A of the Act.

64. Therefore, it is held that the action of the opposite party of the management bank in filling up the vacancies of sub cadre staff amongst eligible sub staff of the bank despite of clear instructions from the Govt./HO is not just and proper. Therefore, reference is decided in favour of the Union and the opposite party is directed to provide the relief to such part time employees in the line of the observations made in the body of the award.

65. Reference is answered accordingly. It is further ordered that a copy of this award be placed on the record of I.D.No. 22 of 2009 (U/s 33-A of the Act) and the same shall also be deemed to have been disposed by means of this award.

Dt. 11.03.14

RAM PARKASH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1956.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/83/2004-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab & Sind Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/83/2004-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present:

Sri Kewal Krishan, Presiding Officer.

Case No. I.D. 36/2004

Registered on 30.11.2004

Shri Ravi Kant
S/o Sh. Kesho Ram,
58, The Mall,
Ambala Cantt (Haryana).

...Petitioner

Versus

The Zonal Manager,
Punjab and Sind Bank,
Zonal Office,
17-B, Chandigarh.

...Respondent

Appearances :

For the Workman Sh. H.S. Hundal, Advocate

For the Management Sh. Sapan Dhir, Advocate

AWARD

Passed on 2.5.2014

Central Government vide Notification No. L-12012/83/2004-IR(B-II)) Dated 18.8.2004 read with Corrigendum dated 25.11.2013, by exercising its powers under Section 10, sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:-

“Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Ravi Kant S/o Sh. Kesho Ram, Ex-Peon w.e.f. 19.1.2002 is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

In response to the notice, the workman appeared and submitted statement of claim pleading he was interviewed by the respondent management on 26.5.1998. He was selected and appointed as Peon on 9.6.1998. He continuously served till 19.1.2002 when his services were arbitrarily terminated without compliance of the provisions of the Act. He be reinstated in service with back wages.

Respondent management filed written reply pleading that the workman was engaged by the Branch Manager without following any procedure and since the workman got the back-door entry, he do not acquired any right to continue in the service. He was engaged as a casual labourer only to meet the exigency of the service and no appointment letter or termination order was issued to him. It was further pleaded that the termination of service of an employee appointed on need basis cannot be construed as 'retrenchment' and being so, the reference be dismissed.

In support of his case workman appeared in the witness box and examined Paramjit Singh.

Workman filed his affidavit reiterating its case as set out in the claim petition. Paramjit Singh is from the bank and produced certain record.

On the other hand the management has examined Sukhwinder Singh and Balkar Singh who filed their respective affidavits reiterating the stand taken by the respondent management in its written statement.

I have heard Sh. H.S. Hundal, counsel for the workman and Mrs. Kittu Bajaj, counsel for the management and perused the file.

The workman has categorically pleaded in para 2 of the statement of claim that he was interviewed on 26.5.1998 and was appointed as Peon on 9.6.1998 and he worked as such w.e.f. 29.6.1998 to 19.1.2002. These facts are not controverted by the management in its written statement who simply pleaded that the workman was engaged without following the procedure and he was engaged as a casual labourer to meet the exigencies. But there is nothing on the file to show that he was engaged as a casual labourer. Rather the facts pleaded by the workman are not controverted by the management and also supported by the workman while appearing in the witness box clearly prove that he was selected and appointed as Peon and he worked at the said post and continued from 29.6.1998 to 19.1.2002.

Thus the workman worked continuously for more than a year and he was not paid any retrenchment compensation at the time of termination of his services. Thus it is clear case of the violation of provisions of Section 25 F of the Act.

A lengthy argument was advanced by the learned counsel for the respondent management that the workman was a casual labourer who was engaged without following any procedure and thus the bank is not required to comply with the provisions of the Act. If the bank did not comply with the procedure for appointment of a Peon, the workman cannot be blamed for it. As stated above, he was appointed as a peon and he continuously worked for a sufficient long period and his services were not liable to be terminated without complying with the provisions of Section 25F of the Act. Thus the termination of the services of the workman is not legal and he is entitled to reinstatement.

In similar cases and against the present respondent management in Writ Petition No.18154 of 2007 titled Baljit Singh Vs. Presiding Officer and Others decided on 26.5.2010, the Hon'ble High Court ordered the reinstatement of the workman with continuity of service but without back wages. It is neither pleaded nor proved that the workman remained jobless during the period after termination of his services from the bank, therefore, he is not entitled to back wages.

In result it is held that the action of the management in terminating the services of the workman on 19.1.2002 is illegal and he is entitled to reinstatement with continuity of service but without back wages. Respondent management is directed to take him back in service within one month from the publication of the award. The reference is accordingly answered in favour of the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 4 जुलाई 2014

का.आ. 1957.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 14/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/31/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1957.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/31/2008 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2008

Parties : Employers in relation to the management of Punjab National Bank

AND

Their workmen.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal.

Industry: Banking.

Dated: 24th April, 2014.

AWARD

By Order No.L-12011/31/2008-IR(B-II) dated 19.06.2008 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Punjab National Bank, Kolkata by discontinuing the variable

DA on special allowance of Rs. 7 and Rs. 13 payable to the Clerk-cum-Cashiers of the erstwhile New Bank of India (ENBI) presently employed in Punjab National Bank as per the service conditions as mentioned in their respective appointment letters is justified? If not, what relief the concerned workmen are entitled?”

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that none appeared on behalf of the union/workmen on two consecutive dates. Considering the above facts and circumstances and the conduct of the union, it may reasonably be presumed that the union does not want to proceed with the case further. Perhaps, the dispute between the parties has been settled amicably.

3. Accordingly, the instant reference is disposed of by passing a “No Dispute Award”.

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1958.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 77/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/112/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 77/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/112/2011 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 2nd May, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 77/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN:

The General Secretary : 1st Party/Petitioner Union
Indian Bank Employees
Association 17, Ameerjan
Street (TN) Choolaimedu
Chennai-600094

AND

The General Manager : 2nd Party/Respondent
Indian Bank, Circle Office
359, Dr. Nanjappa Road
Coimbatore-641018

Appearance:

For the 1st Party/ : M/s. Ajoy Khose & S. Manogaran,
Petitioner Union Advocates

For the 2nd Party/ : M/s. T.S. Gopalan & Co., Advocates
Management

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/112/2011-IR(B-II) dated 21.09.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Indian Bank, Chennai in imposing the punishment of Compulsory Retirement from service vide their letter dated 03.09.2007 upon Smt. P. Kalarani, Ex-Clerk/ Shroff (SR No. 22385) is legal and justified? If not, what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 77/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively. The petitioner has filed a rejoinder also after the Counter Statement was filed.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Union registered under the Trade Union Act and has substantial following among the workmen at the Respondent Bank. While Smt. Kalarani, a member of the Petitioner Union was working as Clerk at Lawley Road Branch of the Respondent Bank at Coimbatore, she was victimized by the Respondent on false charges of misappropriation and she was compulsorily made to retire from service after a domestic enquiry. On the basis of an oral complaint allegedly made

by a customer, a preliminary investigation was conducted on the complaint and a show cause notice was issued to Kalarani. Though she had submitted her reply to the show cause notice, a charge sheet was issued to her after a lapse of 17 months. It was alleged in the Charge Sheet that on 07.12.2003 she has issued loan challan counterfoil for Rs. 1,415 for the credit of the loan account of one Kalidhasan. She is alleged to have issued loan challan counterfoil for similar amount on 07.04.2004 and also another counterfoil for the same amount without any date also. It is alleged that though challan counterfoil was issued cash was not accounted for by Kalarani. Though Kalarani had established her innocence in the enquiry the same was not accepted by the Enquiry Officer. The Enquiry Officer found that charges 6 to 15 against Kalarani are established. On the basis of this enquiry report the punishment of compulsory retirement from service was imposed on Kalarani. There is no justification for imposing such punishment. An award may be passed directing the Management “to withdraw the punishment imposed on Kalarani and restore all monetary loss suffered by her due to the unjust punishment with retrospective effect”.

4. The Respondent has filed Counter Statement contending as follows:

One Kalidhasan who was maintaining SB Account with Respondent Bank at Lawley Road branch had applied for loan of Rs. 30,000 for purchasing a motorcycle. He had been remitting @ Rs. 1,415 every month from March, 2013. He was very prompt in paying the amount. In the second week of December, 2004 Kalidhasan approached Sujata, an Officer of Lawley Road branch and asked for statement of account in his name and she furnished the statement. After a few days, he came to the branch and enquired about Kalarani who was on leave on that day. After few more days, he again approached Sujata with some counterfoils and also handed over a statement of account. Sujata found that against 22 counterfoils produced by him, only 19 credit entries were made in the Statement of Account. On verifying the counterfoils, it was found that entries for the months of December, 2003, April, 2004 and June, 2004 were missing. The cash counterfoils were issued by Kalarani signed with Cash Received Stamp affixed in two counterfoils. One of the counterfoils was without any date or signature. On 11.03.2005, the branch informed the Circle Office about the irregularities committed by Kalarani. On 12.03.2005, Kalidhasan cleared the loan and closed the loan account. During the course of investigation by the Senior Manager (Vigilance Department) of Coimbatore Circle Office, Kalarani who was confronted with the counterfoils admitted her handwriting. A charge sheet was issued to Kalarani and an enquiry was conducted. On the basis of the report of the Enquiry Officer the Disciplinary Authority imposed punishment of Compulsory Retirement with superannuation benefits. This order was confirmed by the Appellate Authority on 13.11.2007. Kalarani has

received her gratuity and Provident Fund and is also receiving her pension. The punishment of Compulsory Retirement imposed on Kalarani is fully justified. There is no reason for interfering with the punishment. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the allegations made in the Counter Statement and also reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Ext.W1 to Ext.W16 and Ext.M1 to Ext.M29.

7. The points for consideration are:

- (i) Whether the punishment of Compulsory Retirement imposed by the Respondent on Kalarani is legal and justified?
- (ii) What is the relief if any to which Kalarani is entitled?

The Points

8. The petitioner association has raised the dispute on behalf of Kalarani who was its member and was working as Clerk/Shroff with the Respondent Bank. At the time of the alleged occurrence she was working in Lawley Road branch of the Respondent Bank at Coimbatore.

9. According to the Respondent, one Kalidhasan who had availed vehicle loan of Rs. 30,000 from the Lawley Road branch had come to the bank in December, 2004 and approached Sujata, an Officer of the Bank requesting to give statement of account in his name and the required statement was furnished also. After a few days, he had been to the branch enquiring about Kalarani but she was on leave on that day. After some more days, he had again approached Sujata with the counterfoils showing remittances of loan instalments. It was noticed that though he was having 22 counterfoils, only 19 remittances were accounted for and there were no remittances as per three counterfoils. The Branch Manager had informed the Circle Office about this by his letter dated 11.03.2005. On the next day itself Kalidhasan, the account holder cleared the loan and closed the account. An investigation was made regarding the absence of entries and on the basis of the investigation report a charge sheet was issued to Kalarani. It is on the basis of the enquiry conducted and the enquiry report filed consequently, the punishment of Compulsory Retirement was imposed on the petitioner. The Enquiry Officer had found the charges 6 to 15 leveled against Kalarani are proved.

10. Kalarani, the concerned employee was examined before this Tribunal only to put forth her case that she was not gainfully employed after she was turned out from

service by imposing the punishment. The documents pertaining to the enquiry were produced before this Tribunal and both sides are relying upon these documents to advance their case.

11. It is argued on behalf of the concerned employee that there is absolutely no justification for imposing the punishment on her. The counsel has pointed out that on many of the aspects the Enquiry Officer has agreed with the contentions put forth on behalf of the employee but at the same time entered a finding of guilt except on charges 1 to 5. I had been going through the report of the Enquiry Officer and find that the Enquiry Officer had not made a proper assessment of the evidence or documents. He was just quoting from the summing up given by the Presenting Officer and also the Defence Representative and agreeing or disagreeing with the same. There was no proper discussion of the facts. So rather than discussing the report of the Enquiry Officer itself, it would be better to analyze the evidence both oral and documentary let in the enquiry proceedings and find out if the charges leveled against the concerned employee are established.

12. Though charges leveled against the concerned employee are 15 in number, actually it relates to three loan challan counterfoils, each of Rs. 1,415 allegedly issued by her on three different dates. She is said to have issued loan challan counterfoils on 07.12.2003, on 07.04.2004 and on another date, the date which is not given in the counterfoil. The case is that though all these counterfoils contained cash received stamp affixed on it, the cash was not accounted in the books of the branch. All the counterfoils are issued in the loan account of Kalidhasan.

13. An Officer of the Vigilance Department, Coimbatore had done the investigation based on the report given by the Branch Manager. He has been examined as MW1 in the enquiry proceedings. Sujata, the Officer whom Kalidhasan had allegedly approached is examined as MW2. The relevant documents are marked through these witnesses also.

14. It has been argued by the counsel for the petitioner that it is a case where the account holder who allegedly made the complaint has not been examined. The non-examination of the then Manager of the Branch has also been pointed out by the counsel as a lacunae in the case of the Management. Merely because these two were not examined, the case of the Management could not be rejected. The material that is available is to be assessed to decide whether it is sufficient to establish guilt of the concerned employee. The Apex Court has held that (State Bank of India Vs. Tharun Kumar Banerjee – 2000 8 SCC 12) when sufficient evidence is produced one way or other the evidence not produced will not be of any significance.

15. While considering the case against the concerned employee, certain facts which are beyond

dispute are to be referred to first. The three counterfoils which have given rise to the allegation against the employee are marked as Ext.M1 in the enquiry proceedings and is marked as Ext. M2 here. Before Charge Sheet was issued to the concerned employee, a show cause notice was issued to her and this is marked as Ext.W3. In this show cause notice it is stated that she had given the concerned counter challan foils but cash was not accounted by her in the books of the branch. She was asked to show cause for the misconduct allegedly committed by her. Ext.W3A is the reply given by Kalarani to Ext.W3. In this reply there is no case for her that she did not issue the counterfoils. Again there is no case for her that she was not working in the cash department at the time. She has stated in her reply that she remember vaguely that on a couple of occasions Kalidhasan had sent one of his workers for remitting instalments to his account while she was working in the Cash department, but since the cash brought by him was short, she had given back the entire cash together with the challan. At the time she did not notice whether she had affixed the stamp or not on the counterfoil. According to her, she was under the impression that the messenger would come back for remitting the cash again. There are two things which are clear from this reply that the concerned employee was sitting in the cash when the counterfoils were issued and that she is the one who had issued the counterfoils. There is also Ext.M13, a statement given by the concerned employee to MW1 during his investigation. In this statement she has asserted that the three challans shown to her are in her handwriting. Much argument has been advanced against this statement. Even as stated by MW1, the statement is recorded in his handwriting. He has stated that it was as stated by the employee herself he has recorded it and the employee has put her signature in that after going through it. The concerned employee has not got into the witness box to deny this document which has been marked through MW1.

16. MW1 in the enquiry proceedings has spoken about the investigation conducted by him. He had questioned the concerned borrower, the concerned employee and also the staff of the bank examined as MW2.

17. The evidence regarding how the matter of issuance of the counterfoils came out is spoken to by MW2 who was the Assistant Manager of the branch. The statement given by her to the Investigating Officer has been marked as Ext.M12 (MEX-11 in the enquiry proceedings). MW2 has deposed that Kalidhasan who had availed vehicle loan had called on the bank and had asked for his loan account statement and she had prepared it and handed it over to him. He had approached her after two days and told her that he had remitted 22 instalments as loan but only 19 instalments were credited as per the statement. She had then verified the account and the counterfoils and found that only 19 instalments were credited in the account. She further stated that the three

counterfoils were not very legible and when she asked the borrower about it, he had informed that he is not the one who filled the challan but he had given the amount to Kalarani, the concerned employee who is his neighbor. MW2 had then taken the borrower to the Manager and then explained the position to him.

18. It is very much clear from the admission made by the concerned employee herself that all the counterfoils are in her own handwriting and these were issued by her. The case that is put forth by her is that the amount that was brought to her were short and she had returned the amount to the messenger alongwith the filled up counterfoil and she was under the impression that the counterfoils will be brought back with the required amount. This explanation given by the concerned employee is difficult to be believed. For one thing she had not thought it necessary to get into the witness box and explain the circumstances under which she issued the counterfoils. The three counterfoils including the one without any date are of three different dates. If once the filled up counterfoil that was given to the messenger alongwith the amount brought did not come back with the required amount and the counterfoil itself, the possibility is that she would not have taken it upon her to give filled up counterfoils with her initial in it again without receiving the amount. On the other hand what is seen from Ext.M2 is that all the counterfoils were filled up by her and given by her even though she did not receive the cash and had no occasion to enter remittances in the books of the bank. This is certainly not something that would be resorted to by an experienced employee of the bank like the concerned employee. It has been argued by the counsel for the petitioner that the seal of receipt of cash is not seen affixed in all the counterfoils. However, on examining the three counterfoils I find that this contention is not correct. In all the three counterfoils the seal is seen affixed, though in one it is in illegible manner. There is of course the fact that in one of the counterfoils, the undated one, the initial of the petitioner is not there. On the other hand, in the other two counterfoils, the initial is also there. It has been pointed out on behalf of the petitioner that there is a column for signature or initial of the Manager also in the counterfoils but such signature is missing in all the counterfoils. Once the seal showing receipt of cash is affixed, it is for the concerned Shroff to get the signature of the Manager also. If it is not obtained the concerned employee herself is responsible.

19. It has been argued on behalf of the petitioner that the customer himself had no complaint against the employee and in such circumstance it was not proper to proceed against her. It has been pointed out that the borrower himself has remitted the entire amount and closed the loan account. Ext.M3 is the copy of the main foil showing remittance of Rs. 4,988 and closing of the account by the borrower, Kalidhasan. It has been pointed out that

the borrower has not given any complaint in writing to the Manager. He has complained to MW2 about absence of remittance and she had taken him to the Manager and yet there was no written complaint by the borrower. Subsequently, at the time of investigation, a written statement has been given by the borrower to MW1 and this has been marked as Ext.W2. A translation of the statement is given by MW1 in his investigation report which is marked as Ext.W1. The statement is to be effect that he had remitted Rs. 1,415 very month but three instalments out of these were not credited. He had stated that the instalment were paid by him by giving the amounts to the concerned employee who is his landlord. MW1 has stated in the report that the statement was given by the borrower hesitantly stating that this should not affect the staff. This reveals the delicacy on the part of the borrower in making the complaint. Probably, because he was the tenant of the concerned employee he was thinking that he should not be the cause for any harm to his landlord.

20. The investigation was started even in the absence of a written complaint. This has been much commented upon by the counsel for the petitioner. The counsel for the Respondent has referred to the decision *J. D. JAIN Vs. MANAGEMENT OF STATE BANK OF INDIA AND ANOTHER* reported in 1982 1 SCC 145 in this respect. It was held here that no rule of law enjoins that a complaint has to be in writing. In the decision in *COMMISSIONER OF POLICE VS. JAIBHAGWAN* reported in 2011 6 MLJ 305 Apex Court has commended upon non-examination of complaint only because it was in violation of the provisions of the Delhi Police Rules under which proceedings was taken against the employee.

21. According to the counsel for the petitioner if actually the borrower had paid the amounts to the concerned employee for remittance, he would not have remitted the balance amount on 12.03.2005 and closed the account. As could be seen the remittance was made on the date after the report regarding the incident was given by the Manager to the Circle Office. If actually, the concerned employee had returned the amount because of deficit the borrower need not have waited till a report was given to the Circle Office for remitting the amount. As could be seen from the account, the borrower was regularly making remittance every month except for the three months. Apart from this is the evidence given by MW2 who was approached by the borrower. As could be seen from the evidence of MW2, at the time when the borrower approached her, the concerned employee was on long leave. He was enquiring about the concerned employee and it was subsequently he had obtained the statement of account from MW2. As could be seen from her evidence, the borrower had approached her on another day with all the counterfoils complaining that three remittances are missing. Then there is also the statement given by the borrower to MW1 informing him that he made payment to

the concerned employee. So the mere fact that he remitted the balance amount on the day after a report has gone to the Circle Office could not be accidental. The evidence reveals that the concerned employee had prevailed upon the borrower, paid the amount to him and made him remit the amount. As could be seen the borrower was very much reluctant to make a complaint since he did not want to be the cause for harm to the concerned employee who is none other than his landlord.

22. The counsel for the petitioner has been referring to the delay in giving the report to the Circle Office also. It could be seen from the evidence that at the time when the borrower called on the bank, the employee was on leave and the Manager had been questioning her about the incidence after she rejoined the bank after the leave. It was when he did not receive any explanation that he had reported the matter to the Circle Office so the Manager could not be found fault with in reporting the matter to the Circle Office. This could not be interpreted as victimization of the employee by the Manager. On the other hand he was soft in dealing with the matter, waiting for her to rejoin duty for an explanation.

23. Regarding charges 1 to 5, the Enquiry Officer has exonerated the concerned employee. This was done on the basis of the finding that the date 07.02.2006 which is the date found in the counterfoil which is the subject matter of charges 1 to 5 happened to be a Sunday. The Enquiry Officer opined that the employee could not have been at the bank on holiday and so she could not be found guilty of the concerned charges. There is no necessity to discuss this finding of the Enquiry Officer since the finding has become final. However, the fact remains that this counter foil also is in handwriting of the concerned employee and contains her initial and has also got the seal of receipt of cash.

24. The counsel for the petitioner has referred to the decision *UNION OF INDIA VS. H.C. GOEL* reported in AIR 1964 SCC 364 where it was held that the principle that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished applies as much to regular criminal trial as to disciplinary enquiries held under the statutory rules. The very admission made by the concerned employee goes a long way in establishing the case of the Management that the employee had received the amount from the borrower and had issued the counterfoils affixing the seal showing receipt of cash. The case of the Management is fortified by the evidence given by MW2. The mere fact that there was remittance of the amount by the borrower on a subsequent day will not exonerate the employee from the misconduct that has been committed by her. I do not find any reason to differ from the findings of the Enquiry Officer.

25. The records regarding the past conduct of the employee has been produced by the Respondent. It could

be seen from Ext.M22 to Ext.M29 that she was mismanaging her financial affairs. She was issued a warning for issuing cheque without sufficient balance in her account. She was given another warning for involving in private financial dealings resulting in the bank receiving complaints.

26. The punishment of Compulsory Retirement from service with superannuation benefit has been imposed on the employee. There is no necessity to interfere with the punishment in view of my finding above.

27. In view of the above discussion, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 2nd May, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri P. Kalarani
Petitioner Union

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side :

Ex.No.	Date	Description
Ex.W1	15.03.2005	Preliminary Investigation Report
Ex.W2	16.03.2005	Letter from Sri Kalidhasan, Borrower
Ex.W3	03.05.2005	Show Cause Notice CO:CBE:VG:42:2005-06
Ex.W4	08.06.2005	Reply by Mrs. Kalarani
Ex.W5	17.11.2006	Charge Sheet CO:CBE:VG:296:2006-07
Ex.W6	04.05.2007	Defence summing up
Ex.W7	11.05.2007	Enquiry Officer's findings
Ex.W8	02.06.2007	Comments by Smt. Kalarani (CSE) on Enquiry Officer's findings
Ex.W9	17.08.2007	Proposed punishment order of Disciplinary Authority
Ex.W10	29.08.2007	Reply to the above by the CSE
Ex.W11	03.09.2007	Orders of the Disciplinary Authority
Ex.W12	10.10.2007	Appeal by Mrs. Kalarani (CSE) against the above orders dated 09.09.2007

Ex.W13 13.11.2007 Orders of the Appellate Authority (CO:CBE:VG:404:2007-08)

Ex.W14 07.01.2008 & 1.08.2010 Letter IBEA/GEN/200/2005-08 to Asstt. Labour Commissioner raising an industrial dispute against the above order

Ex.W15 06.06.2008 Reply to the above Indian Bank, HRM Section, Coimbatore

Ex.W16 22.03.2011 Our rejoinder to ALC (Chennai)

On the Management's side :

Ex.No.	Date	Description
Ex.M1	12.02.2007	
	13.03.2007	Enquiry
	14.03.2007	Proceedings
	23.03.2007	
Ex.M2	07.12.2003 07.04.2004 Etc.	Copy of three counterfoils dated 07.02.2006, 07.04.2004 and Nil for Rs. 1,415/-
Ex.M3	12.03.2005	Copy of main foil (challan) for Rs. 4,988/-
Ex.M4	08.06.2005	Copy of reply of Ms. Kalarani addressed to GM/Ch/CO/CBE
Ex.M5	11.03.2005	Copy of Lawley Road Branch letter to GM/CH/CO/CBE
Ex.M6	30.04.2003	Copy of Lawley Road Branch office order
Ex.M7	03.02.2003 to 28.02.2005	Copy of Statement of Account No. 602//03 of V. to Kalidhasan of Lawley Road Branch
Ex.M8	10.06.2003 to 12.03.2005	Copy of Statement of Account of V. Kalidhasan of Lawley Road Branch – A/c No. 602/2003
Ex.M9	15.03.2005	Copy of Investigation Report of G. Sridharan of Vigilance Officer
Ex.M10	Nil	Copy of letter dated Nil of V. Kalidhasan addressed to Lawley Road Branch
Ex.M11	16.03.2005	Copy of letter of V. Kalidhasan go Lawley Road Branch
Ex.M12	15.03.2005	Copy of letter of Mrs. M.R. Sujatha – AM – Lawley Road Branch
Ex.M13	15.03.2005	Copy of Written Statement of Mrs. P. Kalarani, Clerk/Shroff/Typist, Lawley Road Branch

Ex.M14 Dec. 2003	Attendance Register	M/s. Empire Financiers regarding Kalarani – non-remittance of instalments properly
Ex.M15 10.05.2013	Statement of Account of Savings Bank Account of Ms. Kalarani – 0410389771 for the period from 01.09.2007 to 10.05.2013 – showing crediting of commutation pension, monthly pension	Ex.W28 31.07.2006 Note from C.O. – Coimbatore to Dy. General Manager regarding the punishments given to Mrs. Kalarani on 11.02.2000, 23.01.2003, 07.06.2005
Ex.M16 -	Gratuity Payment of Rs., 1,98,150/- credited to Intermediary Parking account of Mrs. Kalarani and transferred to her loan accounts and Indian Bank Co-op Society	Ex.W29 10.04.2007 Letter from C.O., Coimbatore to Mrs. Kalarani imposing lenient punishment on her for issuing cheque for Rs. 1.0 lakh without sufficient balance and returned unpaid
Ex.M17 -	Statement of Account of Flood Loan Account – 70288703	
Ex.M18 -	Statement of PF Special Loan Account - 410484858	नई दिल्ली, 4 जुलाई, 2014
Ex.M19 -	Statement of PF Special Loan Account – 401484983	का.आ. 1959. —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 86/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1
Ex.M20 10.04.2007	Presenting Officers Brief	[सं. एल-12012/17/2007-आईआर (बी-II)]
Ex.M21 12.05.2007	Covering letter from Indian Bank to Mrs. Kalarani enclosing finding and calling for her comments	रवि कुमार, अनुभाग अधिकारी
Ex.M22 23.01.2003	Letter to Mrs. Kalarani from the bank issuing “warning” for involving in private financial dealings resulting in the bank receiving complaints/court orders	New Delhi, the 4th July, 2014
Ex.M23 22.01.2004	Letter to Mrs. Kalarani from the bank issuing “warning” for issuing cheque without maintaining sufficient balance in her SB A/c.	S.O. 1959. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank, and their workmen, received by the Central Government on 04/07/2014
Ex.M24 25.08.2004	Memo issuing by Bank to Mrs. Kalarani for impertinent behavior with Manager when questioned for taking lunch during working hours without attending to customers	[No. L-12012/17/2007 - IR(B-II)] RAVI KUMAR, Section Officer
Ex.M25 23.09.2005	Letter from Velandipalayam Branch to Circle Office, Coimbatore – regarding Court E.P. Orders on Mrs. Kalarani demanding recover	ANNEXURE BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, CHENNAI Monday, the 5 th May, 2014
Ex.W26 21.11.2005	Letter from an advocate Mr. Somasundaram, Coimbatore to the bank for compliance of an EP order against Mrs. Kalarani	Present : K. P. PRASANNA KUMARI, Presiding Officer Industrial Dispute No. 86/2011
Ex.W27 30.09.2005 to 29.09.2005	Letter from Customer Service Cell of Indian Bank, H.O., Chennai, enclosing a complaint from	(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Vijaya Bank and their workman)

BETWEEN:Sri B. Ramesh : 1st Party/Petitioner**AND**

1. The Dy. General Manager/ : 2nd Party/1st Petitioner
Disciplinary Authority
Vijaya Bank, Personnel
Department (ID)
Head Office
Bangalore-560001
2. The Chairman & Managing : 2nd Party/2nd Respondent
Director, Vijaya Bank
41/2, M.G Road
Bangalore-560002

Appearance:For the 1st Party/
Petitioner : M/s K.V. Ananthakrishnan,
V. Chandrasekar, AdvocatesFor the 2nd Party/1st &
2nd Respondents : M/s S. Rajasekar,
R. Shenbagaram, Advocates**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/17/2007-IR(B.II) dated 12.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of dismissal from service upon Sri B. Ramesh, Ex-Clerk vide order dated 05.08.2004, is legal and justified? What relief the workman concerned is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 86/2011 and issued notices to both sides. Both parties have entered appearance through their counsel and filed their claim and counter statement respectively. A rejoinder has been filed subsequent to the filing of the Counter Statement by the Respondent.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined the services of Vijaya Bank as a Clerk in late 1996 and was posted at Tondiarpet branch. He was transferred to Venkatnarayana Road at Chennai, a fully computerized branch in July 2002. He was having only limited knowledge of computer operation. The petitioner was placed under suspension by the Bank on 05.09.2003 on charges of misconduct. It was alleged against the petitioner that while he was working at Venkatnarayana Road branch, he had fraudulently withdrawn amounts aggregating Rs. 52,800/- by misusing the single window operating system by unauthorizedly debiting closed LTD (Loan against Termed Deposit) A/c Nos. 62 and 152. As

per the report given by the officer who investigated the matter all the fraudulent transactions of changing the name of the closed LT Deposit by changing the limit, drawing power, etc. was done by Udaya Kumar, Clerk who had misappropriated about Rs. 50.00 lakhs on different dates. The Officer who conducted the domestic enquiry against the petitioner has entered a perverse finding that the charges leveled against the petitioner are proved. On the basis of the said enquiry report, the Disciplinary Authority had given a Show Cause Notice to the petitioner and in spite of the explanation given by the petitioner imposed the punishment of dismissal from service on the petitioner, by order dated 05.08.2004. The petitioner has raised the dispute accordingly. The domestic enquiry against the petitioner was not conducted in a fair and proper manner. The Enquiry Officer did not permit the petitioner to rely upon certain documents. The findings of the Enquiry Officer without furnishing the documents requested for by the petitioner amounts to denial of opportunity and is gross violation of the principles of natural justice. The entire fraudulent transactions have been committed by Udaya Kumar. The petitioner has not committed the misconducts alleged against him. The punishment of dismissal from service was unjustly imposed on the petitioner. An order may be passed reinstating the petitioner in service with back wages and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent denies all allegations made in the Claim Statement. The Management of the Vijaya Bank which is a necessary party to the dispute has not been impleaded by the petitioner. The ID is liable to be dismissed for the defect of non-joinder of necessary parties. The petitioner was placed under suspension by order dated 05.09.2003 while he was working at Venkatnarayana Road branch for fraudulent withdrawal of amounts. The petitioner had unauthorizedly and fraudulently debited closed LTD A/c Nos. 62 and 152 on 11.01.2003, 18.01.2003, 06.02.2003 and 08.03.2003 and withdrew a total amount of Rs. 52,800 misusing the single window operators powers. He had failed to bring to the notice of higher authorities the modus operandi of the fraudulent acts committed by Udaya Kumar and had adopted the same modus operandi to fraudulently withdraw amounts from the closed LTD accounts and had thus connived with him. A Charge Sheet was issued to the petitioner for the above charges. The petitioner had given an explanation denying the charges. The Management had initiated departmental enquiry against the petitioner for the charges leveled against him. On enquiry the Enquiry Officer has submitted a report finding that the charges leveled against the petitioner are proved. The contention raised by the petitioner on the enquiry report was found to be not convincing. Communication proposing punishment was given to the petitioner seeking

his explanation, but he did not furnish any explanation. An order was passed on 05.08.2004 dismissing the petitioner from service. The petitioner was given adequate opportunity to defend himself in the disciplinary proceedings initiated against him. He had initiated proceedings before the Asstt. Labour Commissioner after a lapse of 18 months. The petitioner had withdrawn amount through LTD A/c Nos. 62 and 152 using his password misusing the powers of the single window operator. He very well knew that loans are outside the purview of single window operator. He had effected debits in the two LTD Accounts and caused loss to the Bank and derived undue pecuniary benefit. The fraudulent transactions carried out by Udaya Kumar and the modus operandi of the same were within the knowledge of the petitioner. The vouchers pertaining to the fraudulent withdrawal made at the branch were not available as the same were destroyed by the culprits with a view to destroy the evidence. So the Investigating Officer had relied upon the system generated entries to find out the modus operandi adopted by the petitioner for the fraudulent transactions. The petitioner could not be ignorant of operation of computer as he was working at Venkatanarayana Road branch which was fully computerized. The petitioner is not entitled to any relief.

5. In view of the contention raised in the Counter Statement, that Vijaya Bank should have been made a party to the proceedings. The petitioner has subsequently impleaded Vijaya Bank as the Second Respondent and amended the Claim Statement. The petitioner has filed a rejoinder denying the allegations made in the Counter Statement and also reiterating the case in the Claim Statement.

6. The petitioner having raised a contention in the Claim Statement that the domestic enquiry was not conducted in a fair and proper manner, this point has been heard as a preliminary issue by this Tribunal. By order dated 03.10.2013, this Tribunal has entered a finding that the enquiry was done in a fair and proper manner, in accordance with the principles of natural justice.

7. The evidence in the case consists of the documents marked as Exts.W1 to Ext.W19 and Exts.M1 to Ext.M6. No oral evidence has been adduced by either side.

8. The points for consideration are:

- (i) Whether the action of the Management of Vijaya Bank in imposing the punishment of dismissal from service on the petitioner is legal and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

9. The petitioner who had joined the service of Vijaya Bank as a Clerk was working in Venkatanarayana

branch of the bank during the period of the alleged incident. While working there, on 05.09.2003 he was put under suspension on the charges of certain misconducts allegedly committed by him. The misconducts have come to light on investigation by the Officer who was investigating into the massive fraud allegedly committed by Udaya Kumar who was also working in the branch. The investigation report revealed that the petitioner had fraudulently withdrawn a total amount of Rs. 52,800/- by debiting two LTD Accounts. The petitioner was issued with a Charge Sheet on 21.11.2003. In this charge sheet which is marked as Ext.W8 it was alleged that the petitioner had unauthorizedly and fraudulently debited closed LTD Account Nos. 62 and 152 on 11.01.2003, 18.01.2003, 06.02.2003 and 08.03.2003 by withdrawing a total amount of Rs. 52,800/- by misusing the single window operators powers. It was also alleged that though the petitioner was aware of the method used by Udaya Kumar for committing certain fraudulent transactions, rather than bringing it to the notice of higher authorities adopted the same method to withdraw amount by debiting closed LTD accounts. The petitioner is said to have debited entries in LTD A/c No. 152 by debiting Rs. 20,000/- on 11.01.2003, Rs. 9000/- on 18.01.2003 and Rs. 8,800/- on 06.02.2003 Rs. 15,000/- on 08.03.2003 in LTD A/c No. 152. LTD A/c No. 62 was originally in the name of Srinivasa Rao and Renuka. This account was closed on 05.12.2002 and brought to zero balance. On 12.1.2002 Udaya Kumar who was clerk of the branch changed the name of the deposit holder and thereafter changed the limit / drawing power on various dates by misusing the passwords of another staff and authorized the entries by misusing the passwords of supervisory staff. The petitioner also debited amount through the same LTD Account, the drawing power of which was changed by Udaya Kumar to withdraw amount and misappropriate it. Regarding LTD No. 152 the same modus operandi is said to have been used by Udaya Kumar. The petitioner has taken advantage of it to withdraw Rs. 15,000/- by debiting this account. Thus, the total amount said to have been withdrawn by the petitioner is Rs. 52,800/-.

10. In the enquiry, the Management has examined the then Manager of the Branch as MW1 and examined the Officer who investigated the matter as MW2. On the basis of the evidence of these witnesses and the documents relied upon by the Management, the Enquiry Officer has entered a finding that the charges leveled against the petitioner are proved.

11. It has been argued on behalf of the petitioner that the petitioner had not committed any act of misconduct amounting to misappropriation. According to the Counsel for the Petitioner the material that have been let in in the enquiry proceedings is not sufficient to substantiate the charges of misappropriation and misconduct alleged

against the petitioner. According to the counsel, the two witnesses examined by the Management are not at all competent to give evidence. So far as MW1 is concerned, she was not Manager of the concerned branch during the period of the alleged incident. She had joined the Branch as manager only subsequently. It has been argued by the Counsel for the Petitioner that since this witness was not at the branch at the time of occurrence she was not competent to prove the documents pertaining to the alleged transactions. I am not able to agree with the Counsel for the Petitioner in this respect. The documents that are relied upon by the Management, are mostly documents generated from the systems of the bank regarding the alleged transactions and also other documents pertaining to the charges alleged against the petitioner. MW1 in her capacity as the Manager was the person in custody of the concerned documents. She was the person in-charge of the documents. This being so, she was quite competent to prove these documents in the enquiry proceedings. The Counsel for the Petitioner has referred to the decisions of the Apex Court in ROOPSINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS reported in 2009 2 SCC 570 and also decision in LIC OF INDIA AND ANOTHER VS. RAMPAL SINGH BISEN reported in 2010 3 MLJ 1370 in support of the contention that mere admission of documents will not amount to proof. Marking of the documents through MW1 will amount to proof of the documents itself. The only question is whether the documents made available coupled with the evidence of MW1 were sufficient enough to establish the case against the petitioner.

12. Yet another contention that has been raised on behalf of the petitioner before going into the merits of the case is that the documents which were requested for by the petitioner were not produced and were not allowed to be relied upon and this has caused prejudice to the case of the petitioner. While raising this contention the counsel for the petitioner was mainly referring to the non-production of a letter of confession said to have been given by Udaya Kumar, the co-worker of the petitioner accepting responsibility for the entire fraud committed in the branch. Even though, the said document was not produced in the enquiry proceedings there is reference to the letter written by Udaya Kumar in the report of MW2 which is marked as Ext.W6. Now the letter is produced by the petitioner before this Court also. I will be referring to the investigating report of MW2 with particular reference to the confession allegedly made by Udaya Kumar while dealing with the evidence of MW2. So, there is no question of prejudice to the petitioner on account of this.

13. What is the manner in which the petitioner has committed the alleged misconduct? The charge and explanation to the charge already dealt with refers to the same in brief. The exact manner in which the act has allegedly been done by the petitioner is given in the report

of MW2. In fact the report is on the fraud committed by Udaya Kumar. Incidentally MW2 has pointed out the misconduct amounting to misappropriation committed by the petitioner also and referred to this also in his report. He has also referred to certain lapses on the part of other staff including Officers, in his report. Even though he has given the details in Ext.W6, MW2 has given the details during his examination also. The petitioner was admittedly working as Single Window Operator at the time. LTD 62 in the name of Srinivasa Rao and Renuka was opened on 07.04.2001 and has come to zero balance on 05.12.2002. Udaya Kumar had changed the name of the account holder and also the limit and drawing power on different dates and had debited amounts on several dates. In the same LTD Account the petitioner debited Rs. 20,000/- on 11.01.2003, Rs. 9,000/- on 18.01.2003 and Rs. 8,800/- on 06.02.2003. MW2 has stated that at this time the petitioner was working as Single Window Operator under terminal number 12 while Udaya Kumar was working on terminal no. 13. In the same manner, Udaya Kumar had changed the name of the account holder in LTD A/c No. 152, changed the limit / drawing power and debited amounts. On 08.03.2003 the petitioner who was Single Window Operator debited Rs. 15,000/- from this account.

14. It is revealed from Ext.W6 the report of MW2 and also his evidence in the enquiry proceedings that Udaya Kumar was using his own terminal and also the password of others including his superior officers for approval of the transactions for withdrawing amount from the two LTD A/c Nos. 62 and 152 and also for committing several other fraudulent transactions. The main argument that is advanced by the Counsel for the Petitioner is that it is Udaya Kumar himself who has done the transactions allegedly committed by the petitioner also. According to the counsel none of the vouchers pertaining to the transactions are produced. According to him if this vouchers were produced, these would have revealed that Udaya Kumar is the one who actually resorted to these misdeeds also. The vouchers are admittedly not available. They were not produced in the enquiry proceedings. As seen from Ext.W6, Udaya Kumar who resorted to the massive fraudulent transactions have destroyed the vouchers. In the letter of confession said to have been written by him he has admitted that the vouchers were destroyed by him. Udaya Kumar has also admitted that he had taken scroll print out by editing and deleting, as seen from Ext.W6.

15. MW2 has made it clear in his report as well as during his examination that though Udaya Kumar has owned responsibility for the entire fraudulent transaction in his letter, the documents reveal otherwise and point to the petitioner so far as the transactions referred to in the charge are concerned. Even though there is acceptance of responsibility for the entire misdeeds by Udaya Kumar in his letter it will not absolve the petitioner from liability if

the facts are otherwise and if the allegations made against him are proved.

16. It could be seen on an analysis of the evidence of MW2 that the withdrawals referred to in the charges were made only by the petitioner and not by Udaya Kumar. It could be seen from the evidence of MW2 that every attempt has been made during his cross-examination to make out that the transactions allegedly committed by the petitioner also must have been committed by Udaya Kumar and not by the petitioner. The details of the transactions given and explained by MW2 would show that this could not have been so. MW2 has referred to the documents which would show that the petitioner himself is responsible for the alleged transactions. The cash paid scroll which is marked as Ext.M11 would show that on 11.01.2003 Rs. 20,000/- was debited from LTD A/c No. 62 which originally stood in the name of Srinivasa Rao and Renuka and subsequently changed to Gopalakrishnan. Ext.M12 Item No. 24 would show that on 18.01.2003 Rs. 9,000/- was debited under the operator ID of the petitioner. In the same manner Rs. 8,800/- was debited on 06.02.2003. This is the method of operation adopted for debiting Rs. 15,000 on 08.03.2003 in respect of LTD A/c No. 152 also.

17. It is clear from the evidence of MW2 that loans and advances are excluded from the purview of Single Window Operator. Ext.M10 is the circular introducing single window service in totally automated branches. This will show that the Single Window Operator is not given the authority to deal with loans and advances. The petitioner who had put in 8 years service by the time of the occurrence must have been very well aware of this. In spite of this all the transactions by debiting loan account have been done by the petitioner. Annexure-12 to Ext.M9 the subsequent report given by MW2 regarding the transaction of Rs. 66,473/- which was allegedly passed through the petitioner (the petitioner was exonerated of this charge) would show that as per job allocation of the petitioner as Single Window Operator loans and advances were excluded from the purview of his operation. So it is clear that he had no authority to deal with loans and advance at the time when he was working as Single Window Operator, during the time when the alleged transactions had taken place.

18. During examination of MW2, it was put to him in cross-examination that on 03.10.2002, Udaya Kumar had withdrawn Rs. 6,00,000/- through LTD A/c No. 62 and in that case adopting the same modus operandi he might have done the transactions allegedly done by the petitioner also. MW2 has answered in this respect that the transaction printing and access log report in respect of LTD A/c Nos. 62 and 152 would show that the petitioner was working on terminal nos. 12 and 16 respectively on the concerned days. MW2 has stated that Rs. 52,800/- referred to in the charge were withdrawn by the petitioner

only from LTD A/c Nos. 62 and 152. MW2 was asked how in the absence of debit slips and other related data, he came to the conclusion that the petitioner has withdrawn the amount. MW2 has replied that the amounts were passed by the petitioner only. It was also put to MW2 that in all possibility Udaya Kumar who effected the master changes in the two concerned LTD Accounts might have prepared the debit slips signed by the officials and got the payment through the petitioner in terminal no. 12 which was being used by him. In answer to this, MW2 has stated that this will not be possible since if the slips are prepared and signature of the officials are obtained it should come through the service counter after getting authorization and should come to the cashier's terminal for payment. He has pointed out that in the alleged cases the entries have been passed for payment with single user ID of the petitioner. He has stated that even if the debit slips were made available, the position would not change. Referring to the letter written by Udaya Kumar also questions were put to MW2. He has replied that the contents of the letter could not be correct as the access log for and transaction report show otherwise. He has further stated that the transactions by Udaya Kumar were done using the password of Clerk Meenal and using the password of Ranjini Ravi for authorization, but so far as the entries allegedly made by the petitioner are concerned these were passed by the petitioner himself under his own user ID. The relevant cash scrolls and access log report would show that Udaya Kumar did not access the terminal of the petitioner or use the password of the petitioner. The petitioner himself is the only person who used them.

19. In fact, on going through the submission made by the petitioner after evidence of the management was closed, it could be seen that he does not have a case that his terminal was accessed by Udaya Kumar or his password was used by him. What he has stated is that due to his lack of knowledge Udaya Kumar was guiding him and in respect of LTD A/c Nos. 62 and 152 he has passed payments on the basis of vouchers which were not signed. According to him, when Udaya Kumar told him that these were already authorized by the branch officials he made payment in good faith. But this version of the petitioner could not be believed for the reason that he had no authority at all to deal with loans and advances in his capacity as Single Window Operator. There was no question of his believing Udaya Kumar when he was asked to do something for which he has no power or authority, by Udaya Kumar. So it is clear that the petitioner was trying to catch fish out of troubled water, in making this submission.

20. It has been argued by the Counsel for the Petitioner that lapses of the other staff of the branch including officers were brought out in Ext.W6 but proceedings was taken only against the petitioner. This is only victimization, it has been argued. This argument of

the Counsel for the Petitioner could not be accepted. The lapses pointed out against others were only that they were not vigilant enough to maintain the secrecy of their passwords, allowing Udaya Kumar to easily use them. None others have withdrawn any amounts or misappropriated any amounts by using the password of others. MW2 has stated that the password of the petitioner was not used by anybody else including Udaya Kumar and he alone has used it on his own terminal. So it is clear that the petitioner has fraudulently debited amounts from LTD A/c Nos. 62 and 152 as alleged in the charges.

21. It has been argued by the counsel that the acts done by the petitioner are only lapses and could not be described as misappropriation. These could not be described as mere lapses. It is not a case where using his password someone else has debited amounts. On the other hand he himself has done it. So it is withdrawal of the amount for the purpose of misappropriation.

22. The petitioner must have been aware of the fraud that was committed by Udaya Kumar. If he had not known that master changes were made by Udaya Kumar, the two concerned accounts, he would not have resorted to debiting of amounts through these accounts. Rather than informing the authorities about the fraud that was being practiced by Udaya Kumar, he himself had taken advantage of it and adopted the same method to withdraw amount. The records produced by the Management support the report and evidence of MW2 regarding the allegations made against the petitioner. The case of the Management was proved through these. The Enquiry Officer has rightly found that the charges are established against the petitioner.

23. The petitioner was dismissed from service for the misconducts committed by him. In banking transactions faith is predominant. An employee was not acting in a manner that will persuade the customer to repose faith in the bank, he is not entitled to continue in the service of the Bank. He does not deserve even reduction in the matter of punishment. The petitioner is not entitled to any relief.

In view of my discussion above, the reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 5th May, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	25.01.2003	Voucher given with MEX-I
Ex.W2	02.04.2003	Letter by S. Udayakumar with clean copy
Ex.W3	03.04.2003	Circular letter no. 93/2003 DEX No. VI
Ex.W4	11.05.2003	FIR against S. Udayakumar
Ex.W5	01.08.2003	Circular letter no. 199 of 2003 DEX No. IX
Ex.W6	05.08.2003	MEX-I with relevant account sheet
Ex.W7	10.08.2003	Investigation report MEX 2 with A/c Sheet 44
Ex.W8	21.11.2003	Charge sheet
Ex.W9	2003-2004	Statement of Accounts for deduction made from subsistence allowances
Ex.W10	07.03.2004	Defence submission
Ex.W11	21.11.2003	Findings of the Enquiry Officer
Ex.W12	01.07.2004	Proposed punishment
Ex.W13	05.08.2004	Dismissal order
Ex.W14	11.08.2004	Stay Order in WP 22247/04
Ex.W15	13.08.2004	Notice by Advocate
Ex.W16	09.09.2004	Notice by Advocate
Ex.W17	16.06.2010	ID No. 4/2008 – S. Udayakumar
Ex.W18	23.06.2011	Order in WP No. 8465/10
Ex.W19	30.11.2012	Notice to produce

On the Management's side :

Ex.M1	03.04.2003	Suspension order no. PER/IRD/CHN2173/2003
Ex.M2	03.04.2003	Circular letter no. 93/2003
Ex.M3	01.08.2003	Circular letter no. 199/2003
Ex.M4	21.11.2003	Charge Sheet No. PER/IRD/CHN/VIG/CS/297/2003
Ex.M5	03.02.2004	Letter no. PER/IRD/CHN/440/2004
Ex.M6	16.06.2010	Award in ID No. 4/2008 of CGIT-cum-Labour Court, Chennai

नई दिल्ली, 4 जुलाई 2014

का.आ. 1960.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 41/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12011/27/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1960.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. No. 41/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/27/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT

CHENNAI

Tuesday, the 6th May, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 41/2010

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Vijaya Bank and their workman)

BETWEEN:

Sri S.D. Srinivasan, : 1st Party/Petitioner Union
Regional Secretary
Vijaya Bank Workers'
Organization 60, Big Street,
Triplicane Chennai-600005

AND

The General Manager : 2nd Party/Respondent
Vijaya Bank, Personnel
Department Head Office,
41/2, M. G Road
Bangalore-560001

Appearance:

For the 1st Party/ : M/s K.M. Ramesh,
Petitioner Union K. J. Arunachalam, Advocates

For the 2nd Party/ : Mr. S. Pandurangan,
Management P. Raghunathan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/27/2010-IR (B-II) dated 26.11.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Vijaya Bank in imposing the punishment of removal from service on Sri P. Natarajan is legal and justified? What relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 41/2010 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The petitioner is the Secretary of Vijaya Bank Workers Organization, a registered Trade Union which represents a substantial number of Clerical Staff employed in the Respondent Bank. Natarajan, a member of the Union was working as Clerk of Vijaya Bank. He was discharging his duties efficiently and sincerely. While he was working at Dr. Nanjappa Road Branch, Coimbatore he was placed under suspension. Subsequently, a charge sheet was served on him alleging that while he was working as Single Window Operator during the period from 29.06.2005 and 16.07.2005 he had debited in the Savings Bank of Dr. Sumathi on three occasions without any supporting instruments and fraudulently withdrawn amounts, that he had also debited the SB Account of Dr. Ajay Prasad Shetty without any supporting instruments and had fraudulently withdrawn amount and he was in the habit of issuing cheques to third parties without maintaining sufficient balance in his OD Account maintained at Dr. Nanjappa Road, Branch, Coimbatore. One Prabhakara Hegde was appointed as the Enquiry Officer to enquire into the charges leveled against Natarajan, the concerned workman. The Enquiry Officer was the Chief Officer of the Regional Office at the relevant point of time and had handled the papers pertaining to the preliminary stage of initiation of disciplinary proceedings against the concerned workman. For this very reason, the enquiry proceedings was vitiated. The enquiry proceedings against the concerned workman was held against the principles of natural justice. The workman had not committed any misconduct as alleged. The finding of the

Enquiry Officer is perverse. He did not appreciate the evidence properly. Based on the enquiry report the Disciplinary Authority has imposed the punishment of removal from service on the petitioner without any justification. An order may be passed finding that the action of the Respondent in imposing the punishment on the petitioner is illegal and unjustified and directing the Respondent to reinstate the concerned workman in service.

4. The Respondent has filed Counter Statement contending as follows:

The Industrial Dispute in question has not been properly espoused. Natarajan, the concerned workman had joined the service of the Respondent Bank as a Clerk in 1982. During the period of the incident he was working as Single Window Operator at Dr. Nanjappa Road branch, Coimbatore. During 2005, it came to light that the concerned workman had made three unauthorized debits in the SB Account of Dr. Sumathi maintained at the branch on three different occasions and had withdrawn amount aggregating Rs. 45,000. The workman was placed under suspension and a charge sheet was issued to him for withdrawal of Rs. 45,000/- from the SB Account Dr. Sumathi by three different occasions and for withdrawal of Rs. 29,000/- from the account of Dr. Ajay Prasad Shetty. The unauthorized withdrawals tarnished the image of the Bank in the eyes of the customers and general public and were prejudicial to the interests of the bank. The workman disobeyed the instructions of the bank and issued cheques to third parties without keeping sufficient funds in his OD Account also. The workman was charged with gross misconduct as per Memorandum of Settlement on Disciplinary Action Procedure for Workman. The Disciplinary Authority had considered the explanation given by the workman on the charges and had found them unsatisfactory. Accordingly, Mr. Prabhakara Hegde, Chief Manager working at the Regional Office, Chennai was appointed as Officer to enquire into the charges and submit his findings. The enquiry was conducted in a fair and proper manner. The workman was given opportunity to defend the charges. On enquiry into the charges the Enquiry Officer had submitted his findings and Disciplinary Authority who concurred with the findings had imposed the punishment of removal of the workman from the service of the Bank with superannuation benefits. The workman was removed from service for the acts of misconduct proved in the domestic enquiry held in compliance with the principles of natural justice and in accordance with the provisions of Bipartite Settlement. The punishment imposed on him is neither harsh nor disproportionate. The petitioner is not entitled to any relief.

5. The workman having raised a contention that domestic enquiry into the allegations against him was not conducted in a fair and proper manner, this was considered as a Preliminary Issue and this Court has entered a finding

by order dated 10.12.2013 that the enquiry was conducted in a fair and proper manner and in accordance with the principles of natural justice. So the question that remains for consideration is whether the concerned workman has got a case on merits.

6. The evidence in the case consists of oral evidence of WWs 1 and 2 and exhibits marked as Ex.W1 to W25 and M1 to M44. No oral evidence was adduced on the Respondent's side.

7. The points for consideration are:

- (i) Whether the action of the Management in imposing the punishment of removal from service on Natarajan, the concerned workman is legal and justified?
- (ii) What is the relief, if any to which the workman is entitled?

The Points

8. Natarajan, the concerned workman who had joined the service of the Respondent Bank as a Clerk in 1982 was working in the same capacity at Dr. Nanjappa Road branch, Coimbatore at the time of the alleged incident. During July 2005 it is said to have been revealed that the concerned workman had unauthorizedly debited in the SB account of Dr. Sumathi, an account holder of the bank on three different occasions and had withdrawn amount aggregating Rs. 45,000. The workman was placed under suspension consequently. After the incident was revealed, a check was made by the bank regarding the transactions entered into through the concerned workman and it was revealed that he had debited in the account of Dr. Ajay Prasad Shetty, another account holder also on two occasions without any supportive documents and had withdrawn Rs. 29,000. Apart from the allegation of withdrawal of Rs. 45,000 by debiting in the SB Account of Dr. Sumathi made earlier the charge of debiting in the account of Dr. Ajay Prasad Shetty was also incorporated in the charge memo and this was served on the concerned workman. Having found his explanation unsatisfactory, an Enquiry Officer was appointed and enquiry was conducted regarding the charges leveled against the workman. The Enquiry Officer found that the charges are established and furnished a report accordingly. On the basis of these findings, the punishment was imposed on the concerned workman. The question to be considered is whether the material that was put forth by the Management before the Enquiry Officer is sufficient to establish the guilt of the concerned workman or whether the Enquiry Officer has entered the finding of guilt in an arbitrary and perverse manner. In order to substantiate the case the Management had examined 5 witnesses and also marked the relevant documents.

9. Before going into the evidence in the enquiry proceedings, it is benevolent to go through the explanation

that was submitted by the concerned workman in respect of the charge sheet. The explanation which is marked as Ext.W10 reveals what is the stand of the concerned workman regarding the charges leveled against him. There is no case for the workman in his explanation that he was not the single window operator at that time or that he is not the one who had dealt with the transactions regarding which charges were leveled against him. Regarding the allegation of debiting in the account of Dr. Sumathi, he has stated in his explanation that there are supporting instruments for his debiting Rs. 20,000 on 12.07.2005, another Rs. 20,000 on 13.07.2005 and Rs. 5,000 on 16.07.2005. Regarding debiting in the account of Dr. Ajay Prasad Shetty also he has stated that there were supporting instruments for the Rs. 10,000 that was debited on 29.06.2005 and for Rs. 19,000 debited on 06.07.2005. Regarding issue of cheques without keeping sufficient amount in the account, he has stated that those cheques had been cleared subsequently.

10. The Management had examined MW1 who was the Chief Manager of Dr. Nanjappa Road branch since December 2004. He has stated that as per Ext.M8 the document pertaining to job rotation, the concerned workman was allotted the work of Single Window Operator apart from additional works mentioned therein. The attendance register marked through MW1 would show that the concerned workman was on duty in the bank on the days on which amounts were allegedly withdrawn by debiting accounts of the two Medical Practitioners, Dr. Sumathi and Dr. Ajay Prasad Shetty. As already stated there is no case for the concerned workman that he was not on duty on the relevant dates or that he is not the one who dealt with the transactions referred to in the charge sheet issued to him.

11. As seen from the evidence of MW1, the incident seems to have come to light through the letter written by Dr. Sumathi to the branch stating that she did not make the withdrawals in question. She had asked the bank to look into the matter and take action for the unauthorized withdrawals of money from her account and re-credit the money withdrawn immediately. Subsequently, the concerned workman had written a letter to Dr. Sumathi assuring that the amount withdrawn from her account totaling Rs. 45,000 will be compensated by him. The letter is marked Ext.M19. The workman has subsequently remitted the amount of Rs. 45,000. However, in the explanation submitted by him, his case is that he was threatened by some Officers of the Bank and he was forced to remit the amount. He had made good the amount that he has withdrawn from the account of Dr. Ajay Prasad Shetty also. However, according to him he had made these remittances in the circumstances stated by him and these remittances do not mean that he is the one who had withdrawn the amounts unauthorizedly and misappropriated the amounts.

12. Even without reference to the remittances made by the concerned worker, without considering whether these remittances were on account of the fact that the workman himself is the one who had withdrawn the amounts, on the basis of the documents pertaining to the withdrawals and also the evidence of relevant witnesses it could be seen that the withdrawals were made by the concerned workman without any supporting documents. The transaction reports of the days on which withdrawals were allegedly made and the Cash Scroll Registers of these days were marked in the enquiry proceedings. The transaction reports are marked as Ext.M3 to Ext.M7 and the Cash Scroll Register of the relevant days as Ext.M11 to Ext.M15. All these documents were marked through MW1. There is also the evidence given by MW4 who had worked as Assistant Branch Manager at Dr. Nanjappa Road branch from May 2004 to October 2005. MW4 has stated that there are no supporting instruments for the debit entries in question. He has deposed that the entire transaction were entered and authorized by the concerned workman in his capacity as Single Window Operator. The slip bundles of the concerned days were produced by this witness before the Enquiry Officer. He has deposed that no debit vouchers are available regarding the cash withdrawal transactions that were made by the concerned workman. The counsel for the Respondent had referred to the relevant documents and pointed out that the entries regarding the transactions do not show any cheque or any withdrawal slip number. The extract of the account of Dr. Sumathi marked as Ext.M18 would show that the number of the cheque or withdrawal slip pertaining to the transactions are not given. The Cash Scroll Register marked as Ext.M11 pertaining to 12.07.2005 would show that withdrawal of Rs. 20,000/- was made from the account of Dr. Sumathi. However, the cheque number or date of the transaction are not given in the column for the same. Ext.M12, the Cash Scroll Register on 12.07.2005 would show withdrawal of another Rs. 20,000 and that also without the details of the cheque or the withdrawal slip. This is the case with transaction dated 16.07.2005 also as seen from the Cash Scroll Register. At the same time, the number of the instrument through which withdrawals were made in other cases by the customers are seen given by the workman concerned.

13. Dr. Sumathi has been examined as MW3. She has identified the complaint that has been made by her regarding the unauthorized withdrawal of Rs. 45,000/- made from her account. After the amount was made good by the concerned workman, Dr. Sumathi has written a letter to the Chief Manager stating that she has no further complaint over the issue and she is closing the complaint. This witness was not cross-examined on behalf of the workman regarding the complaint made by her and this stands unchallenged. Merely because she has closed her complaint in view of the remittance made to her account

subsequently, it could not be stated that the concerned workman was not responsible for the unauthorized withdrawals allegedly made.

14. There is also the evidence of MW2 who was the partner of the firm who conducted audit of the account of the branch. A special report was given after auditing the account after the incident of withdrawal by debiting the account of Dr. Sumathi has come to light. It was through this report, it was revealed that amounts were debited from the accounts of Dr. Ajay Prasad Shetty on 29.06.2005 and on 06.07.2005 in the same manner as was done in the case of Dr. Sumathi. It was consequently the charge of withdrawal by debiting the account of Dr. Shetty was also included in the charge memo issued to the concerned workman.

15. MW5 is the one who has investigated into the alleged malpractices and submitted the report which is marked as Ext.M38. The report has given the details of the manner in which the withdrawals were made. This witness has stated that he has verified the Sub-day books of the relevant dates and has found that the books did not reveal the existence of any instruments supporting the transactions in question. He has stated with reference to Ext.M32 to Ext.M36, the print out of the Sub-day books that some numbers with irrelevant dates were given in these but no vouchers were available in the slip bundles.

16. The copy of cheque book issue register for the period from 11.07.2001 to 14.07.2001 marked through MW4 as (Ex.M1) gives the number of the cheque leaves of the two cheque books issued to Dr. Sumathi. This would reveal that the numbers entered in some of the disputed transactions were not pertaining to the cheque leaves in the cheque book issued to Dr. Sumathi. As already stated the case put forth by the concerned workman in his explanation is that he has debited amount only on the basis of supporting documents. The counsel for the petitioner has argued that it was a case of the workman entering a wrong cheque number regarding the transactions. According to him, the cheque number of one Jecinthapaul was wrongly punched in the system and this has created all the confusion. It has been explained by MW4 that the transaction on 12.07.2005 by Jecinthapaul was based on loose cheque leaf the copy of which is marked Ext.M37 that such a transaction should be carried out on the same day on which it was issued. The transaction in the account of Dr. Sumathi vide instrument of same number is on 11.05.2005 which is not possible. Thus the documents and the oral evidence given by the witnesses substantiate the case of the Management that it was the case of the concerned workman consciously debiting amount from the two accounts without any supportive documents.

17. The counsel for the petitioner has argued that Dr. Ajay Prasad Shetty whose account is unauthorizedly

debited has not given any complaint. It has come out in evidence that Dr. Shetty who was aggrieved by the debit of his account has closed the very account itself. MW4 has spoken about this also in his evidence. The counsel for the Respondent has referred to the decision of the Apex Court in STATE BANK OF INDIA VS. TARUN KUMAR BANERJEE AND OTHERS reported in 2000 8 SCC 12 wherein it was held that a customer of the bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper banker-customer relationship and therefore would not be in the interest of the bank. Even in the absence of any evidence by Dr. Shetty, there is sufficient evidence to show that amount was withdrawn by debiting his account also without any supportive documents.

18. On the basis of the withdrawals made by the workman the charge that he has tarnished the image of the bank before the customers as well as in the eyes of the general public and it is an act prejudicial to the interests of the bank has also been made on the workman. It is clear from the evidence that Dr. Sumathi was very much aggrieved and was repeatedly asking to make good the amount by remitting the amount that was unauthorizedly withdrawn. More damaging for the bank is the fact that Dr. Ajay Prasad Shetty who was a faithful customer of the bank for several years had closed the account consequent to the incident. Certainly, the acts of the concerned workman had tarnished the image of the bank in the eyes of the customers and also those public who came to know about it. So there is every justification for this charge also.

19. The last charge against the workman is that he had issued cheques without maintaining sufficient balance in his account. This has been admitted by the workman also. His explanation is that he had subsequently cleared the liability on the basis of the cheques. The counsel for the petitioner has argued that issuing cheque without balance will not amount to misconduct. The counsel has referred to the decision in AL KARLA Vs. THE PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD. in this respect. It was a case where the alleged act of failure to use advances for the purpose intended were not specifically stated to be misconduct in the conduct rules of the employees. However, it is revealed from the evidence that as per the memorandum of settlement on disciplinary action for workman clause 5 (e) issue of cheque without sufficient balance on the part of the workman is specifically termed as misconduct. The workman had acted against the relevant clause and has thus committed misconduct in this respect also. Thus it could be seen that there was every justification for the findings by the Enquiry Officer.

20. The Disciplinary Authority has imposed the punishment of removal of the petitioner from the service of the bank with superannuation benefits as would be otherwise due under the Rules and Regulations and

without disqualification from future employment. This was the most lenient way of punishing the workman when the gravity of the misconduct committed by him is taken into account. In spite of punishment, the workman is entitled to superannuation benefits and there is no bar on future employment also. So the punishment could not be said to be disproportionate to the nature of offence also. So no interference is required in the matter of punishment as well.

21. On the basis of my discussion above, I find that the concerned workman is not entitled to any relief. The reference is answered against the petitioner.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/
Petitioner Union : WW1, Sri S. D.
Srinivasan
WW1, Sri Natarajan

For the 2nd Party/
Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	20.03.2009	Industrial Dispute raised by the concerned workman before the Asstt. Labour Commissioner (Central), Chennai
Ex.W2	15.06.2009	Notice issued by the Assistant Labour Commissioner (Central), Chennai
Ex.W3	02.08.2009	Remarks/reply filed by the Second Party before the Asstt. Labour Commissioner (Central), Chennai
Ex.W4	01.02.2010	Notice issued by the Asstt. Labour Commissioner (Central), Chennai
Ex.W5	23.02.2010	Notice issued by the Asstt. Labour Commissioner (Central), Chennai
Ex.W6	09.03.2010	Minutes of the Conciliation Meeting before the Asstt. Labour Commissioner (Central), Chennai
Ex.W7	01.06.2010	Report submitted by the Asstt. Labour Commissioner (Central), Chennai u/s 12(4) of the ID Act, 1947

Ex.W8	22.07.2005	Order of suspension issued to the concerned workman
Ex.W9	21.02.2006	Charge sheet issued to the concerned workman
Ex.W10	18.03.2006	Explanation submitted by the concerned workman to the charge sheet
Ex.W11	21.04.2006	Letter from concerned workman to the Enquiry Officer nominating defence assistant
Ex.W12	26.04.2006	Letter from Enquiry Officer to the concerned workman regarding defence assistant
Ex.W13	07.06.2006	Letter from concerned workman to the Disciplinary Authority for change of Enquiry Officer
Ex.W14	04.05.2006 To 09.06.2006	Enquiry Proceedings
Ex.W15	18.08.2006	Letter from Presenting Officer to the Enquiry Officer enclosing written brief
Ex.W16	17.09.2006	Written brief submitted by the Defence Representative to the Enquiry Officer
Ex.W17	12.12.2006	Letter from Second Party to the concerned workman enclosing enquiry report
Ex.W18	08.11.2006	Enquiry Report
Ex.W19	12.02.2007	Explanation given by the concerned workman to the Disciplinary Authority over the enquiry report
Ex.W20	30.06.2007	Show Cause Notice issued by the Second Party Bank proposing the punishment of removal from service
Ex.W21	20.07.2007	Letter from the concerned workman to the Disciplinary Authority
Ex.W22	10.08.2007	Reply given by the concerned workman to the Show Cause Notice to the Disciplinary Authority
Ex.W23	10.08.2007	Minutes of the personal hearing before the Disciplinary Authority
Ex.W24	07.07.2007	Proceedings of the Disciplinary Authority imposing the punishment of removal from service on the concerned workman

Ex.W25 23.10.2007 Appeal from the concerned workman to the Appellate Authority of the Second Party Bank

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	Extract of cheque book issued register – MEX-I
Ex.M2	-	Statement of accounts pertaining to SB A/c 7802 of Dr. K. Sumathi for the period of 01.01.2005 to 19.04.2006 MEX-2
Ex.M3	12.07.2005	Todays transaction report for 12.07.2005 pertaining to single window operations by the petitioner MEX-3
Ex.M4	13.07.2005	Todays transaction report for 13.07.2005 pertaining to single window operations by the petitioner MEX-4
Ex.M5	16.07.2005	Todays transaction report for 16.07.2005 pertaining to single window operations by the petitioner MEX-5
Ex.M6	29.06.2005	Todays transaction report for 29.06.2005 pertaining to single window operations by the petitioner MEX-6
Ex.M7	06.07.2005	Todays transaction report for 06.07.2005 pertaining to single window operations by the petitioner MEX-7
Ex.M8	-	Extract of job rotation of the petitioner for the period– 01.08.2004 to 31.05.2005 and from 01.02.2005 to 31.07.2005 MEX-8A and 8B
Ex.M9	-	Attendance Register for the month July 2005 MEX-9
Ex.M10	-	Attendance Register for the month June 2005 MEX-10
Ex.M11	12.07.2005	Cash Scroll Register for 12.07.2005 MEX-11
Ex.M12	13.07.2005	Cash Scroll Register for 13.07.2005 MEX-12
Ex.M13	16.07.2005	Cash Scroll Register for 16.07.2005 MEX-13
Ex.M14	29.06.2005	Cash Scroll Register for 29.06.2005 MEX-14

Ex.M15	06.07.2005	Cash Scroll Register for 06.07.2005 MEX-15
Ex.M16	18.07.2005	Complaint from Dr. Sumathi – MEX-16
Ex.M17	19.07.2005	E-mail from Dr. Sumathi to Chairman of the Bank MEX-17
Ex.M18	18.07.2005	Letter from petitioner to Dr. K. Sumathi MEX-19
Ex.M19	19.07.2005	Letter from the petitioner to the Chief Manager Dr. Najappa Road Branch – MEX-20
Ex.M20	19.07.2005	Letter from the petitioner to the Chief Manager Dr. Nanjappa Road Branch MEX-20
Ex.M21	19.07.2005	Letter from the petitioner to the Chief Manager Dr. Nanjappa Road Branch enclosing medical certificate MEX-21
Ex.M22	21.07.2005	Pay-in-slip pertaining to Rs. 45,000/- remitted by the petitioner in Dr. K. Sumathi's account MEX-22
Ex.M23	25.07.2005	Pay-in-slip pertaining to Rs. 29,000/- remitted by the petitioner in Dr. Ajay Prasad Shetty's account MEX-22
Ex.M24	27.07.2005	Special report by concurrent auditor's MEX-24
Ex.M25	19.07.2005	Letter from Chief Manager to Regional Office Chennai MEX-25
Ex.M26	19.07.2005	Letter from Chief Manager to Regional Office Chennai MEX-26
Ex.M27	26.07.2005	Letter from Chief Manager to Regional Office Chennai enclosing report on withdrawal in SB A/c 8592 MEX-27
Ex.M28	22.07.2005	Letter from Dr. K. Sumathi to Chief Manager of the branch MEX-28
Ex.M29	04.08.2005	Statement showing cheques returned in the account of the petitioner MEX-29
Ex.M30	31.08.2005	Statement showing cheques returned in the account of the petitioner MEX-30
Ex.M31	-	Cheque returned register for the period 21.07.2005 to 31.08.2005 MEX-31

Ex.M32 12.07.2005 Sub-day book printout of Dr. Nanjappa Road Branch for 12.07.2005 pertaining to debit transactions in SB Accounts for the said day MEX-32

Ex.M33 13.07.2005 Sub-day book printout of Dr. Nanjappa Road Branch for 13.07.2005 pertaining to debit transactions in SB Accounts for the said day MEX-33

Ex.M34 16.07.2005 Sub-day book printout of Dr. Nanjappa Road Branch for 16.07.2005 pertaining to debit transactions in SB Accounts for the said day MEX-34

Ex.M35 29.06.2005 Sub-day book printout of Dr. Nanjappa Road Branch for 29.06.2005 pertaining to debit transactions in SB Accounts for the said day MEX-35

Ex.M36 06.07.2005 Sub-day book printout of Dr. Nanjappa Road Branch for 06.07.2005 pertaining to debit transactions in SB Accounts for the said day MEX-36

Ex.M37 12.07.2005 Copy of loose cheque leaf no. 135765 dated 12.07.2005 for Rs. 8,000/- in the name of A. Jesinthapaul, SB A/c No. 7302 MEX-37

Ex.M38 16.08.2005 Investigation report dated 16.08.2005 submitted by Sri J.S.W. Edwin (4839), Manager, Regional Inspectorate, Chennai in connection with the fraudulent transactions noticed in SB A/c No. 7802 and 8592 during the tenure of Sri P. Natarajan, the Charge Sheeted Employee as Single Window Operator, MEX-38

Ex.M39 19.03.2006 CSE's reply to Charge Sheet dated 18.03.2006 DEX-I

Ex.M40 18.11.2005 CSE's reply dated 11.08.2005 submitted to the Investigation Officer in response to IO's letter calling for his version in the matter DEX-2

Ex.M41 07.06.2006 CSE's request letter dated 07.06.2006 addressed to the Deputy General Manager, Disciplinary Authority for appointment of fresh Enquiry Officer, DEX-4

Ex.M42 08.06.2006 Reply dated 08.06.2006 received by CSE from the Disciplinary Authority DEX-5

Ex.M43 21.04.2006 Copy of CSE's letter dated 21.04.2006 to the Enquiry Officer to engage services of an advocate to defend him in the Departmental Enquiry DEX-7

Ex.M44 26.04.2006 Enquiry Officer's reply dated 26.04.2006 DEX-8.

नई दिल्ली, 4 जुलाई 2014

का.आ. 1961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 46/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 प्राप्त हुआ था।

[सं. एल-12012/117/2002-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1961.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank, and their workmen, received by the Central Government on 04/07/2014

[No. L-12012/117/2002-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present:

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/46 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF VIJAYA BANK

The General Manager
Vijaya Bank
Regional Office
Vikas Centre S.V. Road
Santacruz (W)
Mumbai-400 054.

AND

Their Workmen.

Shri Satish Sooda

E-3, Flat no.16

Girija Shankar Vihar, Karvenagar

Pune – 52.

APPEARANCES:

For the Employer : Mr. R.S. Pai, Advocate.

For the Workman : Mr. J. H. Sawant, Advocate.

Mumbai, dated the 22nd April, 2014

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/117/2002-IR (B-II), dated 07.08.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Vijaya Bank in terminating the services of Shri Satish Sooda w.e.f. 11/8/1998 on the ground of voluntary retirement without considering his representation for withdrawal of voluntary retirement under proviso to Sub-Clause 4 of Clause 29 of Chapter 5 of Vijaya Bank Employees’ Pension Regulations 1995 is legal and justified? If not, what relief the concerned employee is entitled to?”

2. After receipt of the reference from the Ministry, both the parties were served with notices. In response to the notice, the second party workman filed his statement of claim at Ex-7. According to him he is employee of the Bank. At the relevant time he was posted at Sadashiv Peth Branch, Pune as a Special Assistant. The workman desired to retire voluntarily. Therefore on 12/05/1998 he submitted his application for voluntary retirement with three months’ notice. His letter of voluntary retirement was not accepted unconditionally and the management informed the workman to that effect vide its letter dated 09/07/1998. They accepted the application of voluntary retirement subject to certain conditions which were not acceptable to the workman. He could not clear the liability and could not comply with the provisions of all relevant pension regulations of the Bank. Therefore the letter of retirement given by the workman was invalid in all respects and it had become ineffective. The workman thereafter formally withdrew his resignation vide his letter dt. 31/07/1998 and prior to the completion of notice period. He had given sufficient explanation for withdrawal of his resignation. However management forced the workman to retire from the service w.e.f. 11/08/1998 against his wish, though workman had not complied with the conditions for voluntary retirement. So also he was ready and willing to continue in the services of the first party. The workman has accepted the retirement benefits under protest.

3. According to the workman it was termination of his services w.e.f. 11/08/1998 and it was not voluntary retirement. Therefore it amount to retrenchment as prescribed under Sec 25-F of the Act. The management has not followed the retrenchment procedure. Therefore the said termination of services of the workman is illegal. The workman has therefore raised industrial dispute before ALC (C) Pune. As the matter could not be settled in conciliation proceeding, on the report of ALC the Labour Ministry sent the reference to this Tribunal. The workman prays that as his termination is illegal, the management be directed to reinstate him with full back-wages and all other consequential benefits.

4. The first party resisted the statement of claim vide its written statement at Ex-8. According to them, the workman has taken voluntary retirement under Regulation 29 of Vijaya Bank (Employees’ Pension Regulation 1995) on health ground pursuant to his application dated 12/05/1998. He had availed all the service benefits arising out of the said voluntary retirement. In the circumstances, the reference is not tenable. Secondly they contended that the workman was working as a special assistant in a supervisory capacity and was drawing pay exceeding Rs.1600 p.m. at the relevant time. Therefore he is not covered by the definition of ‘workman’ as contemplated under Section 2 (s) of the I. D. Act. According to them the workman himself had applied on 12/05/1998 seeking voluntary retirement under Regulation 29. His request for voluntary retirement was accepted and the same was informed to the workman vide management’s letter dated 09/07/1998. The workman had sent the letter for withdrawal thereafter dt. 31/07/1998 which become infructuous. Thereafter the workman had accepted all his retirement benefits such as PF, Gratuity and other benefits. He had raised this dispute after lapse of about three years thereafter before ALC ©. His application for voluntary retirement was already accepted by the bank. Therefore neither it can be said retrenchment nor it can be termed as termination as has been alleged. The workman is therefore not entitled to the relief of reinstatement and back wages as has been prayed for. Therefore they pray that the reference be rejected.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
(i)	Whether he is “workman”?	Yes
(ii)	Is dispute tenable in the light of V.R.S. availed by the workman?	Not tenable
(iii)	Whether decision of the workman in withdrawing the application of V.R.S. after accepted by Bank and after acceding the CRS benefits as per retirement rules is legal?	No

(iv) Can Workman's prayer still require to consider in the light of decision taken by Bank on his application for VRS?	No
(v) What relief workman can get?	No relief
(vi) What order?	As per final order

REASONS

Issues no.1:-

6. In this respect it was contended on behalf of the first party that the workman was Special Assistant and working in a supervisory capacity and drawing wages exceeding Rs.1600/- p.m. However Bank has not led any evidence to show that either the workman was performing the work in the supervisory or administrative nature. There is also no pleading or proof that the workman has any power to take decision binding on the first party Bank or its employees. Special Assistant in a Branch though receiving pay more than Rs.1600/- cannot be called performing managerial duties. Most of the employees in the Bank are doing the work manually and nature of their work is clerical. In the circumstances vague plea raised on behalf of the first party is insufficient to term the employee as performing managerial duties. Bank has also not led any evidence to show that the workman was performing any supervisory or managerial duties. In the circumstances employee of the Bank who was performing work of clerical nature can very well be termed as 'workman' as defined under Section 2 (s) of the I.D. Act. Thus it needs no further discussion to arrive me at the conclusion that the second party employee is workman. Accordingly I decide this issue no.1 in the affirmative.

Issues nos. 2 & 3:-

7. Both these issues are related to VRS and the alleged withdrawal thereof. In this respect the fact is not disputed that the second party workman herein had applied for voluntary retirement by his application dated 12/05/1998. The fact is also not disputed that management had accepted his application vide its letter dt. 09/07/1998. According to the workman the said acceptance of VRS was conditional. According to him he has not complied with the condition put by the Bank. Therefore he was free to withdraw his resignation letter. Accordingly he had filed the application dt. 31/07/1998 and withdrawn his application for voluntary retirement. In this respect I would like to point out that according to the first party Bank they had not put up any condition and the application for the voluntary retirement submitted by the workman dated 12/05/1998 was accepted by the Bank on 09/07/1998. Therefore according to the Bank once the voluntary retirement application is accepted, thereafter the workman cannot withdraw the same. His application dt. 31/7/1998 for withdrawal is subsequent to the acceptance. Therefore

the workman cannot claim that he has withdrawn his application for VRS.

8. Furthermore the Id. Adv. for the first party has submitted that the workman has not disputed that he has received all retirement benefits such as amount of PPF, amount of Gratuity and all other dues from the first party and the concerned authorities. In the circumstances the workman is estopped from claiming the relief of reinstatement. In support of his argument the Id. Adv. resorted to Apex Court ruling in Punjab and Singh Bank and Anr V/s. R. Ranveer Singh Bawa and Anr. (2004) 4 SCC 484. In that case the respondent therein has applied for voluntary retirement. After the due date he sought permission to withdraw his option. He wrote reminders in that regard. However appellant did not grant him permission to withdraw his option and relieved him from service. Meanwhile his retirement dues were credited in his savings bank account and in his salary account. The respondent utilised the said amounts to repay his loan and also kept some amount in fixed deposit etc. In writ petition High Court held that the respondent workman was entitled to withdraw his option before its acceptance by the Bank. The Bank's writ appeal was also dismissed. The matter was taken to Apex Court. The Apex Court noted that as the respondent without any objection received the amounts of retirement benefits credited in his account and used them for re-payment of loan, some amount was re-invested in fixed. In the circumstance the Hon'ble court observed that:

"Therefore the principle of estoppel extensively discussed by this court in the case of Bank of India V/s. O.P. Swarnakar applies to the facts herein. The conduct of Respondent no.1 indicates his knowledge about payments in his account, that he never objected to such payments and that he had appropriated those amounts for his benefit. Therefore he cannot resile from the scheme."

9. That apart in the case at hand the application for Voluntary retirement was already accepted by the management. Thereafter the workman sent his application for withdrawal of his option which was rejected by the management. Furthermore the workman herein had received all the retirement benefits without any objection and he has raised the dispute after gap of three years after his retirement. As he has accepted all the retirement benefits, he is estopped from claiming that he had withdrawn his option of voluntary retirement. In the circumstances, I hold that the workman was not entitled to withdraw his option of VRS after it was accepted by the Bank. Therefore the prayer of the workman cannot be considered or accepted. Accordingly I decide this issue no.2 in the negative that the dispute is not tenable and consequently I decide issue no.3 also in the negative that demand of the workman is not legal. Consequently I also hold that prayer of the workman cannot be considered.

Issue no. 4 & 5 :-

10. In the light of above discussions it is clear that the workman had availed the benefits of VRS. Now he is not entitled to the relief of reinstatement with back wages as has been prayed for. Accordingly I decide issue no.4 & 5 in the negative and proceed to pass the following order:

ORDER

Reference stands rejected with no order as to cost.

Date: 22/04/2014 K. B. KATAKE, Presiding Officer

नई दिल्ली, 4 जुलाई 2014

का.आ. 1962.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकत्ता पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 21/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था ।

[सं. एल-32011/20/2003-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1962.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Kolkata Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-32011/20/2003 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA****Reference No. 21 of 2004**

Parties: Employers in relation to the management of
Kolkata Port Trust

AND

Their workmen.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : Mr. M. K. Das, Industrial
Relations Officer

On behalf of the Workmen : None.

State: West Bengal.

Industry: Port & Dock.

Dated: 8th May, 2014.

AWARD

By Order No.L-32011/20/2003-IR(B-II) dated 03.06.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Kolkata Port Trust in denying sanction of ‘mess money’ to the Laboratory staff attached to H.S.F.O., Berhampur (W.B.) is legal and justified? If not, what relief the concerned employees are entitled to?”

2. When the case is taken up for hearing today, none appears on behalf of the union/workmen, though the management is represented by its authorized representative. It appears from the record that the notice issued to the union on 11.12.2013 has been duly served on 14.12.2013; but in spite of the same none appeared on behalf of the union.

3. Considering the above facts and circumstances and also the conduct of the union, it may reasonably be presumed that the union is not willing to proceed with this case further. Perhaps the union has got no grievance at present against the management.

4. Accordingly, the present reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata,

The 8th May, 2014.

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 4 जुलाई 2014

का.आ. 1963.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 09/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था ।

[सं. एल-12011/111/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1963.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,

Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/111/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 09 of 2007

Parties: Employers in relation to the management of
UCO Bank

AND

Their workman.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workman : None

State: West Bengal. Industry: Banking

Dated: 21st May, 2014.

AWARD

By Order No.L-12011/111/2006-IR(B-II) dated 01.05.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of UCO Bank by not regularizing Shri Shymal Das Gupta, Part-time sweeper who claimed to have been working for more than 16 years continuously in UCO Bank, is justified? If not, what relief the concerned workman is entitled to?”

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the parties are absent for two consecutive dates. It further appears from the record that the union has filed a petition on 04.12.2013 stating that the dispute between the parties has been settled amicably out of the Tribunal and as such the union does not want to proceed with this case further.

3. In view of the above, instant reference case is disposed of by passing a “No Dispute Award”.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st May, 2014.

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 10/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/109/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/109/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 10 of 2007

Parties: Employers in relation to the management of
UCO Bank

AND

Their workman.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workman : None

State: West Bengal. Industry: Banking.

Dated: 21st May, 2014.

AWARD

By Order No.L-12011/109/2006-IR(B-II) dated 01.05.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of UCO Bank by not regularizing Shri Santosh Pathak, Part-time sweeper who claimed to have been working

w.e.f. 31.03.1990 in UCO Bank, is justified? If not, what relief the concerned workman is entitled to?"

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the parties are absent for two consecutive dates. It further appears from the record that the union has filed a petition on 03.12.2013 stating that the dispute between the parties has been settled amicably out of the Tribunal and as such the union does not want to proceed with this case further.

3. In view of the above, instant reference case is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st May, 2014.

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 11/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/114/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/114/2006-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 11 of 2007

Parties: Employers in relation to the management of
UCO Bank

AND

Their workman.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None.

On behalf of the Workman : None.

State: West Bengal.

Industry: Banking

Dated: 21st May, 2014.

AWARD

By Order No.L-12011/114/2006-IR(B-II) dated 01.05.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of UCO Bank by not regularizing Shri Biswajit Poddar, Part-time sweeper who claimed to have been working for more than 14 years continuously in UCO Bank, is justified? If not, what relief the concerned workman is entitled to?"

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the parties are absent for two consecutive dates. It further appears from the record that the union has filed a petition on 03.12.2013 stating that the dispute between the parties has been settled amicably out of the Tribunal and as such the union does not want to proceed with this case further.

3. In view of the above, instant reference case is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st May, 2014.

नई दिल्ली, 4 जुलाई 2014

का.आ. 1966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ संख्या 15/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/115/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1966.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2007)

of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/115/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 15 of 2007

Parties: Employers in relation to the management of
UCO Bank

AND

Their workman.

Present:

JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None.

On behalf of the Workman : None.

State : West Bengal. Industry : Banking.

Dated: 21st May, 2014.

AWARD

By Order No.L-12011/115/2006-IR(B-II) dated 01.05.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of UCO Bank by not regularizing Shri Jital Das, Part-time sweeper who claimed to have been working for more than 12 years continuously in UCO Bank, is justified? If not, what relief the concerned workman is entitled to?”

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the parties are absent for two consecutive dates. It further appears from the record that the union has filed a petition on 04.12.2013 stating that the dispute between the parties has been settled amicably out of the Tribunal and as such the union does not want to proceed with this case further.

3. In view of the above, instant reference case is disposed of by passing a “No Dispute Award”.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 21st May, 2014.

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1967.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 25/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/90/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1967.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/90/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 25 of 2007. Reference No. L-12012/90/2006-IR(B-II) dated 20.04.2007.

Sh. Sanjay Kumar,
R/o H.No.7926/4,
Nai Basti, Opp. Congress Bhawan,
Ambala City.

...Workman

Versus

1. The Regional Manager,
Central Bank of India,
427-A., Regional Office,
Punjab, Kumhar Mandi,
Ludhiana-141001.

...Respondent

Appearances:

For the Workman : Sh. Yogesh Jain Advocate.

For the Management : Sh. N.K. Zakhmi Advocate.

Dated:-27.05.2014

AWARD

Government of India Ministry of Labour vide notification No. L-12012/90/2006-IR(B-II) dated 20.04.2007

has referred the following dispute to this Tribunal for adjudication:

Term of Reference :

“Whether the action of the management of Central Bank of India in terminating the services of the workman Sh. Sanjay Kumar is illegal and unjustified? If so, to what relief the concerned workman is entitled to and from which date?”

2. On receipt of the reference, notices were issued to the parties. The workman filed claim statement stating therein that he joined the management bank on 23.08.1993 as clerk and his services were discharged on 03.05.2004. During the period of his service there was no complaint of any kind and workman served the bank with the dedication. On 23.09.2000 a memo was served upon the workman which was replied. He was issued a charge sheet, the contents of which is as under:-

1. The Public sector Bank employees Co-operative Urban Salary Earner Thrift & Credit Society Ltd.” of which Shri Sanjay Kumar was President, was maintaining a current account with B/o Ajrawar, The said society was enjoying an over draft limit of Rs. 1.80 lacs against its MMDC No. 22/450 for Rs. 2.00 lacs, with the branch. Shri sanjay Kumar while sitting in the branch used to canvass deposit for the society. He while on duty received cash and made payments of behalf of the society during the bank hours and has used all means to increase the business of the society, at he cost of the bank. While sitting in the bank, he received payment of the following cheques which is ample proof that he was doing business of the society during bank’s working hours at the cost of the bank.

Cheque No. 066698 for Rs. 1800/-

Cheque No. 086931 for Rs. 1250/-

As a result of his canvassing and allurement of higher rate of interest, Sri Kuldeep Singh, Smt. Paramjit Kaur, Shri Nirmal Singh etc., who were customers of the bank/branch become members of the society and gave business to the society instead of bank. Thus he leaving aside the bank’s interest accepted deposit from the customers during the working hours.

2. He unauthorizedly used Shri Deepak Raj for mobilizing the business of the society, against the interest of the bank. He paid commission @ 2% to shri Deepak Raj on the deposit collected and deposited by him with the society. Allured by Shri Sanjay Kumar, Shri Deepak Raj used name of the bank, collected deposit from the general public and deposited the same with the bank in the A/c of the society. Detail of some cash vouchers duly filled in by Shri Deepk Raj, ADA depositing amount with the society is given below:

30.01.1999	Rs. 26,480/-
01.02.1999	Rs. 2,400/-

05.02.1999	Rs. 1,320/-
06.02.1999	Rs. 2,490/-
23.02.1999	Rs. 8,430/-
24.02.1999	Rs. 45,600 & 4930/-
12.03.1999	Rs. 14,020/-

3. Following cheques payable to bearer were issued by society, payment of which was received by Shri Sanjay Kumar on behalf of the loan’s.

Name of the Loanee	Amount	Date of Payment
Surjit Singh	Rs. 20,000/-	16.07.1999
Sadhu Ram	Rs. 20,000/-	—do—
Harnek Sigh	Rs. 20,000/-	17.07.1999
Manoj Kumar	Rs. 20,000/-	—do—
Nachhatter Singh	Rs. 10,000/-	20.07.1999
Sohan Lal	Rs. 7,000/-	27.07.1999
Sat Pal	Rs. 6,000/-	—do—
Gurdial Singh	Rs. 4,000/-	30.07.1999
Ajay Gupta	Rs. 5,000/-	11.08.1999

He received the above payments without issuing any token and without putting his signature in token of having received the payment. Thus, he intentionally had flouted the laid down system & procedure of the bank for his pecuniary gains.

4. On dated 13.10.2001, Shri Sanjay Kumar without producing any resolution in the capacity of President of the society instructed on the back of the MMDC No. 22/450 dated 30.10.1998 for Rs. 2.00 lacs, in the name of the Public Sector Bank Employees Co-op Urban Salary Earners Thrift & Credit Society Ltd., to close the A/c before maturity and after adjusting the ODA/c there against (limit of Rs. 1.80 lac), to issue Demand Draft in favour of the society payable at Ambala City. MMDC in question was held by the bank as security. Although he was not authorized to get the a/c closed and knowing fully well about the liquidation of the society, he got the a/c/ of the society closed on that day in absence of proper authority from the society. Earlier also he requested Shri I.J.S Arora, the then Branch Manager to close the a/c but Arora advised him to produce resolution of the society, to this effect. On the day of the incident when Shri Arora, was away to Patiala in connection with some official work, he got the opportunity enchased. He made Shri S.K.Garg and Shri Ramesh Chander believe that there was a resolution from the society to close the a/c, whereas no such resolution was passed by the society. Thus, Shri Sanjay Kumar flouted the system & procedure of the bank for his pecuniary gains.

5. He calculated maturity value of the said MMDC for Rs. 275632/- out of which Rs. 1,97,935/- was credited to OD a/c of the society to adjust and close the a/c/ and balance amount of Rs. 77,697/- was credited to CD a/c of the society maintained with he branch, which was already having a credit balance of Rs. 400/-. Thus, making a balance of Rs. 78,097/- in the account of the society. A sum of Rs. 78,097/- was debited to a/c/ of he society, a/c/ was closed and a DD voucher for Rs. 77,902/-(exchange in DD Rs. 195/-) to issue DD in favour of Public Sector Co-operative Non Agri. Thrift & Credit Society Ltd.” payable at Ambala, was prepared by him, whereas, balance if any, in society’s a/c was required to be transferred in favour of society itself. Thus Shri Sanjay Kumar acted in a prejudicial manner.

6. In the DD issue schedule name of the beneficiary was mentioned by him as “People Sector Co-operative Non Agriculture Thrift & Credit Society Ltd., making payable at Ambala City under serial No. 25/399 for Rs. 77902/- whereas, he got the DD issued in favour of People Co-operative on Agriculture Thrift & Credit Society Ltd., In other words:

He prepared the DD voucher in the name of Public Sector Co-operative Non Agriculture Thrift & Credit Society Ltd., making payable at Ambala instead of the public sector bank Employees Co-op. Urban Salary Earners Thrift & Credit Society Ltd.,

He mentioned name of beneficiary in the DD issue schedule as People Sector Co-operative Non-Agriculture Thrift & Thrift & Credit Society Ltd.,

He prepared and go signed DD in favour of “People Co-operative Non Agriculture Thrift & Credit Society Ltd, payable at Ambala City.

Thus, he mislead the bank officials and also manipulated the bank’s record, and succeeded in transferring/paying balance amount of the society (a/c holder) against its bye-laws to same other society for his pecuniary gain, therefore misappropriated the funds of the society.

The above acts of Shri Sanjay Kumar constitute gross misconduct under clause 5(J) of the Memorandum of settlement dated 10.04.2002.

3. The management without considering the reply instituted departmental inquiry. It is alleged that workman flouted clause 5(J) of settlement dated 27.05.2002. The Inquiry Officer started the proceedings in most illegal and prejudicial manner and concluded the inquiry on 02.07.2003. Although the charges against the workman were wage and did not amount to charges much less the violation of service rules. No adequate opportunity was given to the workman to prove his defence. The inquiry officer gave the finding without evidence on record he did

not adhere to the principle of natural justice. The management acted in mala fide manner and inflicted the punishment upon the workman of discharge from service which was highly excessive and not proportionate to the charges. It is prayed by the workman that order of discharge dated 03.05.2004 is illegal, mala fide, arbitrary, unjustified and against the principle of natural justice. On the ground that clause 5(J) of the memorandum settlement dated 27.05.2002 is not applicable on the workman and no procedure was followed by the management as prescribed in Shastry Award as well as Desai Award. Order of punishment is disproportionate to the charges. The workman was also not afforded opportunity of hearing and finding given by the inquiry officer expect in support of charge No.3 perverse being based on no evidence and the management has not led any evidence to prove the fact but inquiry officer given the finding against the workman. As regards the charge No.1 is concerned. The plea of the management is that this act has been done by the workman while sitting in the bank but no evidence was brought on record. As regards second charge was concerned. The alleged Sh. Deepak Raj did not make any statement to prove the charges against the workman. The other charges made by the management are devoid on any merit. Specifically when the presenting officer did not put any evidence to prove the nature of payment. As regards charge No.4 is concerned despite the fact that it is the finding of the inquiry officer that workman did not have any pecuniary gain. The inquiry officer still goes to prove the charge partly against the workman. As regards charge No.5 is concerned this charge also has been wrongly held to be proved whereas neither the allegation made constituted a charge nor there is any material on record to prove the charges. The workman also stated that charge No.6 has been wrongly partly proved by the bank as the inquiry officer has ignored the defence of the workman and there was no misappropriation or any motive involved on the part of the workman. It appears that inquiry officer failed to understand the allegations. The reply to the show-cause notice dated 09.03.2004 was also not considered by the bank and order dated 03.05.2004 clearly show that the management was prejudice against the workman and principle of natural justice has been violated while passing the order of discharge and the same are not tenable in the law. It is prayed by the workman that the termination being illegal, arbitrary and against the rules of natural justice, the workman may be reinstated in the service with full back wages upto date increments and other benefits and also the cost of the present writ petition.

4. The management filed written statement. Preliminary objection has been taken that charges mentioned in the charge sheet constituted serious act of misconduct. Sh. V.K. Mohindroo was appointed as inquiry officer into the charges levelled in the charge dated 20.07.2002. The list of documents and witnesses along

with copy of the document was provided to the workman. He has cross-examined the witnesses of the management and was asked to produce his witnesses for his defence. The workman was given full opportunity during the course of inquiry proceedings. The inquiry officer submitted his inquiry report and the charge No.1 was proved against the workman. Charge No.2 was proved to the extent that workman used Sh. Deepak Raj ACA for mobilizing deposits for the society and paid commission to him. Charge No.3 was not proved. Charge No.4 was partially proved to the extent that he flouted the system and procedure of the Bank. Charge No.5 was proved. Charge No.6 was partially proved to the extent that he misled bank officials and manipulated the bank's record. The disciplinary authority after examining the inquiry proceeding, document and after applying his mind issued show-cause notice concurring with the finding of the inquiry officer. The disciplinary authority differed with the finding of the inquiry officer that misappropriation of fund of the society by the petitioner is not proved. The disciplinary authority found that the workman instead of pay/transferring proceed of the public sector bank employee to the society itself manage to pay fund of the society to the other society and proposed to inflict the punishment of discharge from service with superannuation benefits. He was also given personal hearing by the disciplinary authority which was availed by the workman after gone through the record the complete record of inquiry proceedings, documents. The disciplinary authority awarded the punishment of discharge from service with superannuation benefits. It is pleaded by the management that the action of the disciplinary authority is just, legal and proportionate and the punishment awarded to the workman is proportionate to the gravity of misconduct on the part of the workman.

5. The appeal filed by the workman was also rejected by speaking order dated 16.04.2005 after examining the complete record and order of the disciplinary authority. It is also pleaded by the management in the written statement that the management reserve the right to prove the acts of misconduct committed by the workman before this Tribunal if this Tribunal find any infirmity in the inquiry by leading oral as well as documentary evidence. It is prayed by the management that there is no merit in the reference and the same may be rejected as the management has followed the principle of natural justice and the action of the disciplinary authority is just, legal and proper.

6. My learned predecessor while hearing arguments on the fairness of inquiry passed the following order dated 06.07.2010. The relevant portion of which is reproduced below:-

“Thus, on the basis of the above observation, I am of the view that a fair, reasonable enquiry was conducted by the enquiry officer and there has been no violation of any rules of principle of natural justice. Likewise, the

disciplinary authority conducted the proceedings fairly, without any procedural lapse.

There is a difference in conducting a fair and reasonable enquiry in accordance with the principle of natural justice and decision making of the enquiry officer and the disciplinary authority. There may be cases in which the enquiry had been conducted in a fair and proper manner according to the rules of principles of natural justice, but the decision making would have suffered with any perversity. Thus, on perversity in decision making, if any, by the enquiry officer and the disciplinary authority while conducting the respective proceedings; quantum of punishment and on the issue of any prejudice caused to the workman for non-supplying of the preliminary enquiry report, opportunity for adducing evidence is afforded to both of the parties. Accordingly, both parties are at liberty to adduce the evidence on the above issue.”

7. In support of their respective contentions, both parties also filed affidavit. Workman also submitted written argument.

8. I have heard oral arguments of both the parties and also gone through the written argument submitted by the workman. I have also gone through the inquiry proceedings and all other record. The parties were given the opportunity to lead evidence on the perversity and quantum of punishment and also on the the issue of non supply of preliminary enquiry report. Both the parties choose not to lead any evidence on these issues and preferred to submit their oral arguments as well as written arguments on behalf of the workman. The only contention of the workman is that the charges were vague and the findings of the enquiry officers are without any cogent evidence and the disciplinary authority acted in a mala fide, arbitrary manner in utter disregard of the basic norms. It is also pleaded that the findings of the enquiry officer are perverse as on all the allegations, the enquiry officer relied on the unproven statement of the workman extracted by the vigilance officer who had earlier worked in the para military forces and knew art of extracting the admissions.

9. On the other hand the learned counsel for the management submitted that the findings of the enquiry officer based on the evidence recorded during the enquiry proceedings and on documentary evidence. On every stage the rule of principle of natural justice has been adhered and there is no perversity in decision making on the part of the disciplinary authority and appellate authority as well. It is also submitted during arguments that the workman failed to prove by any record that there is any prejudice caused to the workman for non- supply of the preliminary investigating report to the workman. It is further submitted in arguments that the punishment imposed upon the workman is commensurate to the gravity of mis-conduct and action of the management is legal and justified.

10. As regards the claim of the workman that inquiry was not conducted fairly and properly and the same was decided by this tribunal on vide order dated.06.07.2010 as reproduced above that inquiry was conducted by the inquiry officer fairly and there has been no violation of any rules of principle of natural justice and the parties were given the opportunity of leading evidence on perversity in decision making if any by the inquiry officer and the disciplinary authority on the quantum of punishment and on the issue of any prejudice caused to the workman for non supplying of the preliminary inquiry. Both the parties did not lead any evidence on this issue and choose to argue the case in their respective oral arguments and workman also filed written argument in support of his contention. The workman filed an application for direction to the management to place on record the circular dated 23.05.1980 which allow for running the thrift society which was already on the record but the management did not object to the contents of the circular. It is the submission of the workman that he never indulge in activities which were against the interest of the management and bank circular dated 23.05.1980 allow for the running of the thrift. As held earlier by my predecessor vide order dated 06.07.2010, there is no infirmity in the inquiry, no further evidence was led by the workman to prove any perversity in the decision making of the inquiry officer and the disciplinary authority. Nowhere, workman proved that non supplying of preliminary inquiry report in what way caused prejudice to him in his defence. The workman failed to show as to what prejudice has been caused to him. Learned counsel for the management relied on 2009 LLR 1176 Abheraj Jaswal Vs. M/s. Godrej Boyce Mfg. Company Ltd. & Ors. and 2011 LLR 634 State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya and submitted that in the matter of disciplinary proceedings, the court cannot act as an appellate court to re-assess the evidence produced in the domestic inquiry besides that it cannot interfere with the ground that any view is possible on the basis of material of record. It is also submitted by the learned counsel for the management on the basis of the above case law that the punishment has been imposed upon an employee after holding the inquiry the court have restricted powers only when the findings were perverse and based on no evidence, therefore this Tribunal cannot interfere in the punishment imposed upon the workman.

11. In the case in hand, as discussed earlier, the workman failed to point out any perversity in the findings of the enquiry officer and in the decision making of the disciplinary authority as well as appellate authority. The workman also failed to prove that the punishment awarded to him is excessive by any cogent reason before this Tribunal. Therefore, taking into consideration the facts and circumstances of the case, I find no merit in the reference and it is held that the action of the management

of Central Bank of India in terminating the services of the workman Sh. Sanjay Kumar is legal and justified and the workman is not entitled to any relief.

12. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
27-05-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 18/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-35011/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-35011/01/2010 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri. D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer
(Friday the 28th day of February, 2014/9th Phalgun, 1935)

ID 18/2010

Union : The General Secretary
Cochin Port Staff Association
W/Island COCHIN –
By Adv. Shri A V Xavier

Management : The Chairman
Cochin Port Trust W/Island Cochin -
By M/s. Menon & Pai

This case coming up for final hearing on 24.02.2014 and this Tribunal-cum-Labour Court on 28.02.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No-L-35011/01/2010-IR(B-II) dated 16.04.2010 referred the following industrial dispute for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the Management of Cochin Port Trust in turning down the demand raised by Cochin Port Staff Association for the promotion of S/Shri N.K. Balakrishnan, K.R. Soman, P. R. Xavier, P. A. Koya to the post of Head Maistries is fair and justifiable? What relief they are entitled to?”

3. After appearance union filed claim statement alleging that the Cochin Port Staff Association is a registered trade union affiliated to all India Port and Dock Workers Federation and International Transport Workers Federation and is competent to raise the industrial dispute of its members who are the workers of the management. The four workmen involved in this dispute joined in service of the management as Lascars. The name of one of the workmen is given as K K Soman instead of K R Soman due to typographical error and hence his name is to be read as K K Soman. He was working as lascar in the Portage Establishment of the management and was promoted to the post of Maistry w.e.f. 06.06.1989 based on the combined seniority list of Lascars attached to portage establishment and wharf establishment maintained by the management from the year 1983 to 1989. Two trade unions, the Cochin Port Employees Organisation and Cochin Port Wharf Staff Association, operating in the traffic department raised objection against the promotion. After having discussions by the management with the unions it was agreed to maintain separate seniority list for lascars of Wharf and Portage divisions and to withdraw the promotion order issued to him in the meeting held on 13.06.1989. Against that decision the four workmen approached the Chairman of the Cochin Port Trust. The then Chairman had decided to maintain common seniority list vide order dated 31.03.1990. Again after discussions with the unions on the same day the management agreed to maintain separate seniority list of lascars of the two establishments as per order dated 31.03.1990. Challenge was made against that decision by the four workmen by filing OP No.17875/97 before the Hon'ble High Court of Kerala with a prayer to direct the management to maintain a common seniority list of the lascars in those two divisions. The OP was dismissed by the Hon'ble High

Court. Against the dismissal they filed Writ Appeal No.2402/1999 and the same was disposed of by the Division Bench of Hon'ble High Court of Kerala with liberty to file fresh representation before the management within four weeks from the date of judgment dated 22.02.1999. Pursuant to it they had submitted a written representation before the Chairman of the management. After hearing them the management proposed to recommend to the Port Trust Board for creation of four posts of maistries by abolishing four posts of lascars in the portage division and to promote them to the higher cadre of Maistry since the employees will have to retire as lascars as there was no promotional avenues in the portage division. The proposal dated 27.09.1999 was approved by the Board on 29.10.1999. Thereby the four lascars were promoted as maistries w.e.f.19.11.1999 as per order dated 26.11.1999. It is because of the stagnation for promotion of the four workmen such a course was adopted by the management. Later the lascars in wharf establishment who were junior to them were promoted as Head Maistries w.e.f.01.07.2001, 01.11.2002 and 01.05.2004. Again the four workmen under reference are in a stagnated position in the matter of promotion from maistries to head maistries. To the knowledge of the union the traffic manager had already given a note dated 24.05.2004 to the Chairman, Cochin Port Trust pointing out the situation and recommending the management to approach the Board to create four posts of head maistries by abolishing four posts of maistries in the portage establishment to promote them after obtaining an undertaking from those four maistries that they would carry out their present duties even after their promotion. As the management had not acted on the proposal union raised the industrial dispute vide letter dated 24.02.2006. The management's inaction is not fair and justifiable. The workers under reference are entitled to get the relief of promotion to the post of head maistries adopting the same method of their promotion to the post of maistries. The demand made by the union for their promotion is fair and justifiable and hence the management can be directed to create four posts of head maistries in the portage division abolishing the present post of maistries and promoting them to the post of head maistries after obtaining an undertaking from them that they would carry out their present duties even after their promotion.

4. In the written statement management would contend that a workman has only a right to be considered for promotion and has no right to get promotion as it is a management function. There is no post of head maistries for promotion in the portage establishment and hence the workman involving in this case cannot be considered for promotion. The issue regarding promotion cannot be considered as an industrial dispute and the dispute raised by the union seeking promotion of the four workmen to a non-existent post is unfair and unjustifiable. Separate

seniority lists of lascars in the portage establishment and wharf establishment were prepared as per the agreement between the recognized union and the management. There was no further scope for promotion for lascars of the portage establishment after having separate seniority list. As the issue referred for adjudication is covered by a valid settlement the reference is not valid. A combined seniority list of lascars of the two establishments under the traffic department was maintained during the period 1983-1988 ensuring no undue comparative advantage between the two sets of lascars. But the major unions of the management objected the same and thereby in the year 1990 it was decided to keep separate seniority list of the lascars attached to those two establishments. The aforesaid decision caused resentment among the lascars of portage establishment as there was no promotional avenues in the portage establishment equivalent to that in the wharf establishment due to which the lascars of portage establishment would have to retire as lascars itself. Hence the workmen involved in this dispute approached the Hon'ble High Court challenging the decision to maintain separate seniority list and the Hon'ble High Court directed the management to consider their representation sympathetically on merits. Accordingly, proposal was placed before the Port Trust Board for creation of four posts of maistries by abolishing four posts of lascars for promoting them to the higher cadre of maistry after obtaining written undertaking from them to the effect that they would carry out their present duties of lascars after the upgradation. The Port Trust upheld the proposal and the four workmen were upgraded as Maistries on 19.11.1991. In the year 2003 the union made demand to grant promotional benefits to those four maistries in the portage establishment as Head Maistries for the reason that the lascars in the wharf establishment who were junior to them were promoted as head maistries. In the meeting convened by the Chairman on 21.04.2006 with the representatives of the Cochin Port Staff Association and Cochin Port Employees Organisation the management clarified that the upgradation of the four posts of Maistries in the portage establishment as Head Maistries is equivalent to creation of posts which is banned by the Ministry. That was agreed by the unions and they in turn requested to examine the possibility of giving financial upgradation under the Assured Career Progression (ACP). While considering it, it is noted that those four workmen had entered into port service as lascars in traffic department during the year 1979 and as per order dated 31.01.1991 they were given personal promotion equivalent to financial upgradation after completion of fifteen years in the same scale w.e.f.13.12.1995 in the next higher scale and thereafter they were upgraded as maistries w.e.f.19.11.1999. While so the union in this case submitted a fresh representation dated 19.11.2007 to the Secretary, Cochin Port Trust stating that by the first financial

upgradation on 13.12.1995 they were benefitted with only ₹ 25/- in their basic pay and by second upgradation as maistries w.e.f.19.11.1999 they were benefitted only with only ₹ 100/- in their basic pay. But at the same time their counterparts in wharf establishment who were recruited and posted along with them within the common seniority list had been enjoying the financial benefit of four promotions. As the financial benefit enjoyed by these four workmen in the portage establishment was very meager the union requested the management to cancel the personal promotion extended to them and to issue order to enable them to receive the promotion under ACP Scheme. It was not acceded to as the cancellation of promotion once granted is not justifiable for the reason that the financial benefits were meager. From the four workmen Shri N K Balakrishnan had retired from service on 30.04.2006. Shri K K Soman and Shri P A Koya were granted financial upgradation w.e.f.19.01.2010 as per the Modified Assured Career Progression Scheme (MACP) envisaged in Clause 38.1 of the Wage Settlement dated 19.01.2010 which provides a third career upgradation unlike the previous ACP Scheme. Therefore, they are currently on the scale of head maistry and they cannot have any residual grievance. Disciplinary action was initiated against Shri P R Xavier vide Traffic Manager's order dated 18.05.2010 and hence he has not been granted upgradation under MACP Scheme. Hence the action of the management in turning down the demand for promotion of the four workmen to the post of head maistries is fair and justifiable and they are not entitled to any relief.

5. Union filed replication denying the contentions in the written statement and reaffirming the allegations in the claim statement.

6. For the purpose of deciding this reference evidence was adduced from both sides. For the union one witness was examined as WW1. On the side of the management MW1 was examined and Exbts.M1 to M15 were got marked.

7. After closing the evidence the arguments for both sides were heard.

8. The points for determination are:-

- (i.) Whether there was proper consideration of the claim of the four workmen involved in this dispute for promotion from the post of maistries to head maistries by the management?
- (ii) Whether the action of the management in turning down the demand raised by the union for their promotion is fair and justifiable?
- (iii) What relief, if any, the workmen are entitled to?

9. **Point Nos.1 & 2:-** At the very outset it is to be pointed out that the union is now limiting the claim for promotion in respect of Shri K K Soman only as the others have already retired from service. It is made clear in the proof affidavit filed by WW1 that the union is interested only in prosecuting the dispute of Shri K K Soman and Shri P A Koya since Shri N K Balakrishnan and Shri P R Xavier retired from service on 30.04.2006 and 30.01.2012 respectively after raising this industrial dispute. At the time of argument learned counsel for the union has submitted that Shri P A Koya has also retired from service and hence the case of Shri K K Soman only requires consideration now in this reference.

10. It is easy to answer this reference by accepting the contention of the management that there is no post of head maistries for promotion to the maistries in the portage establishment and hence the workman has no right for promotion. But in this case it cannot be left without any consideration in view of the procedure followed for their promotion from the post of lascars to maistry through creation of four posts of maistry as well as the other facts and circumstances.

11. Each case is to be decided according to its own facts and the circumstances. It is true that there is no post of head maistry for promotion in the portage establishment after making separate seniority list for the lascars in the wharf and portage divisions of the traffic department of the management. The claim of the workmen in this case requires consideration as there was an outright rejection of the request for promotion by upgradation or creation of four posts of head maistries in the portage establishment by the Secretary for the reason that there was ban of the Ministry for creation of new posts by incurring extra expenditure without placing it before the Port Trust Board. Furthermore, there is the previous instance of creation of four posts of maistries by abolishing four posts of lascars in the portage establishment by the management for giving promotion to those four workmen when there was stagnation due to lack of promotional avenues after making separate seniority list for the portage and wharf establishments after entering into agreement between the unions and the management.

12. S/Shri N K Balakrishnan, K K Soman, P R Xavier and P A Koya joined the service of management as lascars on 18.04.1985, 15.05.1979, 15.05.1979 and 22.05.1979 respectively in the portage establishment of the traffic department of the Cochin Port Trust. It is at the time when Shri K K Soman was given promotion in the year 1990 unions raised objection and thereby separate seniority list was prepared and the promotion order was withdrawn. Afterwards the four workmen in the portage establishment were able to get promotion w.e.f.19.11.1999 by upgrading four posts of lascars as Maistries in the portage establishment. It was pursuant to the direction

of the Hon'ble High Court of Kerala to have a sympathetic consideration on merits of the fresh representation to be submitted by them.

13. When the lascars in the wharf establishment who were juniors to them were promoted as Head Maistries they again approached the management for promotion as Head Maistries. But the management was not amenable for the reason that it requires upgradation of post equivalent to creation of post which is banned by the Ministry.

14. There was recommendation from the traffic manager to the Chairman of the Cochin Port Trust for the creation of four posts of Head Maistries by abolishing four posts of maistries of portage establishment for giving promotion to the four workmen pursuant to the demand made by the union and the same is evidenced by Exbt.M14, copy of the Note to the Chairman, Cochin Port Trust from the Traffic Manager. Therein it is expressly stated that it is not because of the fault of the workmen the separate seniority list was maintained by the management and the Court and the Board were convinced that the portage lascars suffered injustice. There is no pleading or any evidence in this case to prove that it was placed before the Port Trust Board for consideration or that any decision was taken on it by the Board. Exbt.M15 communication dated 06.05.2005 is seen to have been issued by the Secretary to the Traffic Manager informing that according to the existing Govt. guidelines, no new non-plan posts can be created without the approval of the Ministry. It is not seen that it was issued after placing before the Port Trust Board for consideration. There is also no evidence in this case to satisfy that it was considered by the Port Trust Board as in the previous instance.

15. In order to satisfy that there was ban for creation of posts Exbt.M7 was produced by management in this case. It is the copy of the letter dated 26.02.2003 addressed to the Chairman, all major Port Trusts. In it there is no blanket ban for creation of posts. It provides that the creation of posts falling in Group B, C & D categories on the non-plan side is to be made only after obtaining prior sanction of the Central Govt. There is no total prohibition for creation of posts. There can be creation of posts after obtaining prior sanction of the Central Govt. It is a matter to be considered by the Port Trust Board whether new post of head maistry is to be created. As there is nothing to show that there was any consideration of the demand of the union for their promotion as head maistries and the recommendation of the Traffic Manager for the creation of posts by the Port Trust Board as in the previous instance their rejection of the request cannot be said to be proper.

16. Shri K K Soman and Shri P A Koya were given financial upgradation w.e.f.19.01.2010 under the MACP

Scheme envisaged in Clause 38.1 of the Wage Settlement of Wage Revision dated 19.01.2010. It has come out in evidence that they are getting the financial benefits of head maistry without any upgradation of the posts of maistry to head maistry. No additional expenditure is to be incurred even if the posts of maistry will be upgraded as head maistries. There can be temporary creation of posts with the approval of the Ministry without incurring any additional expenditure. Learned counsel for both sides have submitted that there is no question of incurring any extra expenditure if the posts of maistries will be upgraded as head maistries. It also requires consideration by the Port Trust Board.

17. There is stagnation for promotion in the portage establishment and the four remaining maistries were given promotion from lascars to maistries for the reason of stagnation by creation of four posts of maistries. They are facing the same problem and it cannot be left unattended to by the Port Trust Board.

18. At present it is only to be considered whether the post of a maistry can be upgraded or a post of head maistry be created by abolishing a post of maistry in the portage establishment for giving promotion to Shri K K Soman only till his retirement without any monetary benefit and with an undertaking as contemplated in Exbt.M14. It requires consideration by the Port Trust Board and the Port Trust Board can take its own decision as it is the management to decide whether any new post is to be created for the purpose of promotion. It is to be left to the decision of the competent authority. Until there is a decision by following the proper procedure and getting a decision by the competent authority it cannot be held that the action of the management in turning down the demand of the union for promotion of maistries to head maistries in the portage establishment is fair and justifiable.

19. Point No.iii:- In the result an award is passed holding that the action of the management in turning down the demand raised by the union for the promotion of the four workmen to the post of four head maistries is not fair and justifiable. The demand is to be considered by following the procedure as in the previous instance of creation of four posts of maistries abolishing four posts of lascars and to be independently decided by the competent authority of the Cochin Port Trust.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of February, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Workman

WW1 - 12.11.2012 Shri K Damodharan

Witness for the Management

MW1 - 07.05.2013 Shri C Unnikrishnan Nair,
Traffic Manager, Cochin Port Trust

Exhibit for the Workman - NIL

Exhibits for the Management

M1	-	Copy of the relevant pages of the combined seniority list of Lascars of Wharf establishment and Portage Establishment
M2	-	Copy of judgment dated 22.02.1999 in WAO No.2402/1998 of the Hon'ble High Court of Kerala
M3	-	Copy of the Proceedings of the Chairman dated 27.09.1999
M4	-	Copy of proposal to the Board for creating 4 posts of maistries by abolishing 4 posts of lascars (Agenda item No.C-3 dated 29.10.1999)
M5	-	Copy of Board Resolution No.110 on Agenda item No.C-3.
M6	-	Copy of Minutes of discussion held by the Chairman with CPSCA and CPEO dated 21.04.2006
M7	-	Copy of letter No.A-11013/23/2002-PE-II dated 26.02.2003 issued by Ministry of Shipping to the Chairmen of all the major Port Trusts specifying creation of non plan posts
M8	-	Copy of letter No.LB-12013/10/90-R.O. dated 31.01.1991 from the Ministry to the Chairmen of all the major Port Trusts and the Deputy Chairmen of all Dock Labour Boards and Haldia Dock Complex regarding improvement in promotional opportunities
M9	-	Copy of letter dated 19.11.2007 from The Cochin Port Staff Association to the Secretary, Cochin Port Trust
M10	-	Copy of Settlement of wage revision for Port & Dock Workers w.e.f.01.01.2007 signed on 19.01.2010
M11	-	Copy of Order No.B1/ACP/Maistry/2010/T dated 13.12.2010 issued by the Traffic Manager granting MACP to Shri K K Soman and Shri PA Koya

- M12 - Copy of Order No.B/A1/PRX/2009/T dated 18.05.2010 issued by the Traffic Manager imposing penalty on Shri P R Xavier
- M13 - Copy of Order No.P/S/7/2012/S dated 16.04.2012 issued by the Deputy Chairman relaxing the punishment imposed on Shri P R Xavier
- M14 - Copy of proposal No.B1/Maistry/Porterage/2004/T dated 24.05.2004 of the Traffic Manager for upgrading the post of Maistry as Head Maistry
- M15 - Copy of letter No.A2/Upgradation-Maistry/Porterage/2005/S dated 06.05.2005 from the Secretary to the Traffic Manager, Cochin Port Trust rejecting the above said proposal.

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1969.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई. डी. बी. आई. बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 18/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12011/127/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-2, Mumbai as shown in the Annexure, in the industrial dispute between the management of I.D.B.I. Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/127/2007 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/18 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF I.D.B.I. BANK

The Deputy General Manager (ER)
IDBI Bank

IDBI Tower, WTC Complex
Cuffe Parade
Mumbai-400 005.

AND

THEIR WORKMEN.

The General Secretary
IDBI Karmachari Sangh
Vishwakarma Sabhagruha
Central Plaza
Rajwada
Satara 415 002.

Appearances:

For the Employer : Mr. Rahul D. Oak, Advocate.

For the Workmen : Mr. S.T. Sahasrabudhe, Advocate

Mumbai, dated the 15th April, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12011 / 127 /2007-IR (B-II), dated 28.02.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“1. Whether the action of the management of IDBI Ltd., Mumbai by not discussing with the IDBI Karmachari Sangh over conditions of service of the employees is justified? If not, what relief the union is entitled to? 2. Whether the action of the management of IDBI Ltd., Mumbai by issuing the mass transfers to 290 Part-time sweepers & Peons is legal and justified? If not, what relief the union is entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice second party union has filed its statement of claim at Ex-3. According to them the members of the second party union were the employees of erstwhile united western Bank Ltd. As per the amalgamation scheme 2006 the United Western Bank came to be amalgamated with the first party Bank. The members of the union who were employees of United Western Bank became employees of the first party w.e.f. 02/09/2006. After amalgamation the union got its name changed and the change was registered with the Dy. Registrar of Trade Unions. The second party union is the majority union amongst all registered trade unions. However the first party did not discuss with the second

party union in respect of pay, allowances and service conditions of the employees. They have also effected mass transfers of the employees who are the members of this union. Therefore union has raised industrial dispute before ALC (C). As conciliation failed on the report of ALC (C), the Ministry of Labour & Employment has sent the dispute to this Tribunal. The union therefore prays that action of the management be declared unjustified, not discussing with the second party union over the conditions of services of the employees. The union also prays that direction be given to the first party management to discuss with the second party union on every issue pertaining to service conditions and continue the same in future at regular interval and as per demands. The union also prays that the order of mass transfer of part time sweeper and peons effected by the management by order no.1317, 1327, 1351 and 1365 and subsequent thereto be declared unfair and illegal. The union also prays that the management be directed to cancel each and every order pertaining to Part Time Sweeper and Peons issued by them and they be directed to report to their original place of posting.

3. The first party management resisted the statement of claim vide their Written statement at Ex-9. According to them the reference is misconceived, premature, motivated and devoid of merit. They denied the allegation of not discussing with the union as vague and imaginary. According to them the service conditions of the erstwhile U.W. Bank are protected and frozen for the benefit of employees for the period of three years covered by the scheme. The amalgamation was as per the scheme sanctioned by the Central Government. Therefore the reference is premature and misconceived. According to them the service conditions are statutory and legally binding. Hence it cannot be subject of industrial dispute. AIIDBEA and IDBWU are the two other unions functioning in the Bank. The second party has accorded recognition much after the conciliation proceeding and the reference. These two unions have entered into settlement with first party and the said settlement is still valid and subsisting. The transfers effected by the Bank are as per the rules. There is no illegality or victimisation in transferring the employees. The allegations to that effect are false. The reference is misconceived and premature. Therefore they pray that the same be dismissed with cost.

4. The second party filed its rejoinder at Ex-10. They denied the contents in the written statement and reiterated the contents in the statement of claim.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. no.	Issues	Findings
1.	Whether second party can seek relief?	Yes.

- | | | |
|----|-----------------------|---------------------|
| 2. | If yes, of what type? | As per order below. |
| 3. | What order? | As per final order. |

REASONS

Issues Nos.1 & 2 :-

6. The second party union herein has made grievance that the first party management has not discussed with them in respect of service conditions of the employees who are members of the second party union. Secondly they have raised objection to the mass transfer of Peons and Part time Sweepers which is against the rules and guidelines and it amount to unfair labour practice. Therefore they have prayed that the transfers effected by various transfer orders of Peons and Part time Sweepers who are members of the second party union be cancelled and the first party be directed to re-transfer them at the respective places from where they were transferred. I would like to discuss these points categorically.

7. In respect of discussing about the service conditions of the members of the union, it was pointed out on behalf of the first party management that, as per the amalgamation agreement the employees of erstwhile U.W. Bank were to be governed by the service conditions of U.W. Bank for the period of three years. This fact is not disputed even by the second party that as per the amalgamation scheme their members were to be governed as per the service conditions of erstwhile United Western Bank for three years. The amalgamation came in to effect from 03/10/2006. Therefore as per the scheme the employees of the erstwhile U.W. Bank were to be governed by the earlier terms and conditions agreed with U.W. Bank. In the circumstances question of discussing terms and conditions of members of the second party union before 02/10/2009 does not arise as till that date these workmen were supposed to be governed by the terms and conditions agreed with U.W. Bank. The management may and can discuss with second party after the aforesaid due date. The reference in that respect can be said premature. Therefore I hold that the action of the management of IDBI Bank Ltd. Mumbai in not discussing with IDBI Karmachari Sangh before 02/10/2009 over conditions of service of the employees is quite justified.

8. In respect of mass transfer, it was submitted on behalf of the first party that, the first party has closed down some branches of the erstwhile U.W. Bank which were running in losses and they have started some new branches. Therefore in view of administrative action the management was well entitled to transfer the Peons and Part time sweepers. In this respect the Id. adv. for the first party submitted that, the transfer of an employee from one branch to another is a condition incidental to the service of the employee and the management has inherent powers to transfer its employees under the existing conditions of services application to them. The Id. adv. also submitted

that, the first party Bank had under taken the exercise of re-locating of branches and re-deploying the existing manpower as a part of its overall business plan and the decision to transfer the various employees was done as part of over all commercial business decision. Therefore he submitted that the second party or the workmen cannot challenge the transfer orders issued by the management. The Id. adv. resorted to the Apex Court ruling in *Abani Kanta Rai V/s State of Orissa & Ors* 1995 SCC Supl.(4) 169 wherein on the point the Hon'ble Court laid down the ratio that it is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafied or infraction of any professed norm or principle governing the transfer.

9. The Id. adv. for the first party also relied upon another Apex Court ruling in *State of MP & Ors. V/s. S. S. Kourav & Ors.* AIR 1995 SC 1056 wherein the Hon'ble Court observed that;

“The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand until they are vitiated either by mala fide or by extraneous considerations without any factual background foundation.”

In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court.

10. The Id. adv. also referred Apex Court ruling in *Kendriya Vidhyalaya Sanghatan V/s Damodar Prasad Pandey & Ors.* 2004 Suppl. (4) SCR 578 wherein Honble Court observed that;

“Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines, the courts should not ordinarily interfere with it.”

11. The Id. adv. also referred another Apex Court ruling in *Purushottam Kumar Jha V/s. State of Jharkhand* 2006 (9) SCC 458 wherein it was observed that;

“As to mala fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in absence of officers the Court was right in not upholding the contention that the action was mala fide.”

12. In the light of these rulings it is clear that order of transfer need not be interfered by the Tribunal or Court as it is for the administrative authority to take decision

about the same, unless it is done with mala fide or is made in violation of any operative guidelines. In short, there is no total bar to interfere with the order of transfer issued by the management. They can be interfered with if made with mala fide intention or in violation of any operative guidelines. In this respect it was submitted on behalf of the second party that as per the directions issued in *Shastri Award Clause 536* transfer of sub staff should not ordinarily be made. More so if made they should not be out of State or language area. On behalf of second party workman it was pointed out that *Shri Karamwar R. M.* was transferred to Gwalior to Raipur. (page 135) *Shri Meshram D.S.* was transferred from Raipur to Khandwa (page 137) *Shri Ramedwar* transferred from Rajnandgaon to Barhanpur (Page 137) *Shri Jain B.F.* transferred from Sanawad to Pune (page 140) *Shri Kotalwar A.D.* transferred from Udgir to Panaji (page 140) *Shri Nikam S. K.* transferred from Panaji to Mundikota (page 140) *Shri Shriwas B.G.* was transferred from Ujjain to Delhi (Page 142). Above transfers were made out of language area out of State and even in some cases beyond more than 1000 Kms. and therefore they were unfair labour practices.

13. These transfers are against the directions of *Shastri award*. Therefore, direction to cancel them can very well be given. Furthermore, I would also like to point out that, as per the scheme of amalgamation, the service conditions of the employees of erstwhile U. W. Bank were to be governed by the terms and conditions of the erstwhile U.W. Bank. It was to continue for three years. Furthermore, as per clause 536 of *Shastri Award*, the sub-staff or Peon should not ordinarily be transferred. However in the case at hand the management has effected mass transfer of Peons and Part-time Sweepers. The data is given by the second party that 43 employees were transferred out of Mumbai when 60 employees are brought from outside branches to Mumbai. It indicates that these 43 employees were transferred unnecessarily. They could have been adjusted in Mumbai itself. Similarly from Satara 45 employees were transferred and 21 were brought to Satara from outside branches. From Pune 14 employees were transferred outside Pune and 19 were brought in Pune from outside branches. From Nagpur 13 employees were transferred out of Nagpur and 11 were brought in Nagpur from outside branches. It indicates that instead of adjusting the Peons and Sweepers within the city or town, they are transferred elsewhere and other employees were brought in their place from outside branches. That is the reason of effecting mass transfer.

14. It was submitted on behalf of the second party that thereafter the Bank has pronounced voluntary retirement scheme so that maximum workmen who were harassed by odd transfers should opt for VRS. There appears no administrative convenience in effecting these mass transfers. Therefore I think it proper to give direction to the first party to cancel the transfers of the above

referred 7 workmen who were transferred out of State or out of language area. I also think it proper to give direction to the management to cancel the transfers of above referred employees and as far as possible they should be adjusted in the same city. The argument on behalf of first party is found devoid of merit that they have closed some branches. Therefore, the staffs of those branches were required to be transferred. They could have very well adjusted these employees within the same city. It was unnecessary to transfer them out of Mumbai, Pune, Satara, Nagpur etc. The management was very well in need of employees in these cities. Therefore, employees from some other branches were brought in these respective cities as pointed out by second party. Accordingly I hold that the mass transfers of 290 Part-time Sweepers and Peons are illegal and unjust. Therefore the second party is entitled to the declaration and direction to that effect. Accordingly I partly allow the reference and proceed to pass the following order

ORDER

- (i) The Reference is partly allowed with no order as to cost.
- (ii) Action of the first party management in not discussing with second party before 02/10/2009 over conditions of service is declared justified.
- (iii) The action of mass transfers of 290 Part-time Sweepers and Peons by the management is declared illegal and unjust.
- (iv) The management is directed to cancel the transfer of 7 workmen out of State/ language area forthwith.
- (v) The management is also directed to cancel the transfers of the other employees and as far as possible adjust them in the same city or town from where they were transferred.

Date: 15/04/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 4 जुलाई, 2014

का.आ. 1970.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेन्नई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 43/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-33011/05/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th July, 2014

S.O. 1970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Chennai Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-33011/05/2012-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 28th April, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 43/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Port Trust and their workmen].

BETWEEN:

The General Secretary : 1st Party/Petitioner Union
Port and Dock Labour Union
No. 1/675, 1st Street,
Muthamizh Nagar
Chennai-600118

AND

The Chairman : 2nd Party/Respondent
Chennai Port Trust
Rajaji Salai
Chennai-600001

Appearance:

For the 1st Party/ : M/s Arunachalam Associates,
Petitioner Union Advocates

For the 2nd Party/ : Sri M.R. Dharanichander,
Management Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-33011/5/2012-IR(B-II) dated 10.07.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Chennai Port Trust in not paying overtime at the rate of ½ an hour to all the shore workers who have been directed to be reported upon as call point in all the three shifts from the date on which they have been directed to be reported upon ½ an hour earlier, is legal and justified? What relief the concerned workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 43/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are as below:

The petitioner is a registered trade union and is one recognized by the Management of Chennai Port Trust, the Respondent. The petitioner has more than 276 workers on its rolls as on date. The petitioner has raised certain demands and served strike notice placing charter of demands to the Respondent. The conciliation was held before the Labour Commissioner, Chennai. The attempt of conciliation failed. On receiving failure notice the Government has referred the matter for adjudication by the Tribunal. The shore labourers of the Respondent are mainly employed in the shore for the work connected with loading and unloading. There are about 600 shore workers. The petitioner alone has about 33 shore labourers enrolled as members. The shore labourers are working in three shifts and are asked by the Management to report half an hour early at the call point for roll call by the Supervisors. The first shift of work starts at 06.00 AM, the second shift at 0200 PM and the third shift at 10.00 PM. But they have to enter the work premises at 05.30 AM, 01.30 PM and 09.30 PM respectively even though actually they commence their work at the allotted shift hours only. The period of half an hour should be treated as duty. The denial of overtime wages for the extra half an hour spent by the labourers is not legal or justifiable. An award may be passed granting overtime wages to the shore workers of Chennai Port Trust whose names are annexed to the Claim Statement, for the period of half an hour for reporting to duty half an hour earlier at the call point.

4. The Respondent has filed Counter Statement contending as follows:

The dispute is raised by the petitioner on behalf of 33 workers. The petitioner has no substantial representation to raise the dispute. So it has no locus standi to raise the dispute also. The Chennai Port Trust has two streams of workmen on its rolls viz. shore workers

in Portage Division and on board workers in Cargo Handling Division. These workers are posted in groups of specified strength for cargo handling works as per the current manning scale approved by the Management. Out of the total number of workmen reported for duty for the shift, as per the requirement for handling import or export cargo certain number of workers are posted for productive work. The Stevedors will be requesting the Port Trust to post necessary number of workmen for handling the import or export cargo, depending upon the volume of work. The traffic department of the Respondent will be allotting the required number of workers as per the requirement of Stevedors. The remaining workers will not be posted for handling of cargo even though they have reported for work. Both on board and shore workers are paid monthly time rate salary irrespective of whether they are posted for cargo handling or not. When posted for cargo handling work, they are additionally paid a piece rate incentive for handling cargo beyond the base tonnage. The workmen can be posted for cargo handling work only after assessing the number of workers present for the shift and the number of workers required for cargo handling. In order to take the roll call of the shore labourers the Assistant Shed Master (ASM) and Deployable Cargomen (DCM) posted to work at labour book section will be present at shore call point in advance to carry out a few preparatory works such as the receiving of details of workers indented, assessing the requirements, ascertaining the posting roster and keeping ready the muster roll to record the attendance. As per the working arrangement, the deployable cargomen report at the call point half an hour before the commencement of each shift. The shore labourers are required to be present at the commencement of work i.e. at 06.00 AM, 02.00 PM and 10.00PM respectively to record their attendance for the respective shifts and receive the postings. The cut-off time for the shore labourers for reporting to the three shifts is 06.00 AM, 02.00 PM and 10.00 PM respectively and not 05.30 AM, 01.30 PM and 09.30 PM as claimed by the petitioner. After the preparatory works are carried out, roll call will be started to assess the total strength of workers present for each shift. An assessment will be made as per the strength of the workers and the requirement and workers will be allotted postings for the shift. All those workers who are present at 06.00 AM, 02.00 PM and 10.00 PM respectively are considered for the posting as per the requirement. No worker who has reported at the call point prior to the commencement of the shift time will be denied work. Since the workers are not engaged for any work before the time of commencement of shift there is no necessity to pay any overtime wages to the workers. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and the documents marked as Exts.W1 to Ext.W9 and Ext.M1 to Ext.M16.

6. The points for consideration are:

- (i) Whether the shore workers of the Respondent are liable to report at the call point half an hour earlier to the commencement of the shift time?
- (ii) Whether the shore workers are entitled to overtime wages for half an hour prior to the commencement of the shift time?

The Points

7. The petitioner is a registered Union recognized by the Respondent and is one among several such unions. As seen from the Claim Statement, the Union has raised the dispute claiming relief for 33 shore workers named in the list attached to the Claim Statement. Even as stated in the Claim Statement, the number of shore workers in the Chennai Port Trust are 600. Out of them, the petitioner has support of 33 workers only. The Respondent has produced Ext.M16 the check list showing the union-wise membership strength on the basis of check-off held during 2014. Out of the total number of employees amounting to 5700 the petitioner has strength of 157 only, as seen from Ext.M16. Out of this, even as admitted by the petitioner the number of shore labourers in the rolls of the petitioner is only 33 out of a total number of 600.

8. It has been argued on behalf of the Respondent that the petitioner has no substantial support from the workers and is not entitled to represent the concerned workers. The counsel has referred to the decision of the Apex Court in *WORKMEN OF INDIAN EXPRESS NEWSPAPER PVT. LTD. Vs. THE MANAGEMENT OF INDIAN EXPRESS PVT. LTD.* (1972 2 LLJ 132) in this respect. It has been held in the above decision that the concerned union should have the necessary representative capacity to espouse the cause of workers. The number of workers in the Respondent Management who support the petitioner union is negligible and therefore it could not be stated that the petitioner union has the representative capacity or locus standi to raise the dispute.

9. In spite of the above finding regarding the locus standi of the petitioner to raise the dispute, the question whether there is any merit in the dispute raised by the petitioner on behalf of the shore workers of the Respondent can be considered. The shore workers numbering about 600 under the Respondent work in three shifts. The first shift starts at 06.00 AM, the second shift at 02.00 PM and the third shift at 10.00 PM. The contention of the petitioner is that even though work starts at the time specified as the time for commencement of work at each shift, the workers are required to report at the point of roll call half an hour earlier to the commencement of shift time and therefore this half an hour is to be considered as period of duty and they should be paid overtime wages for this half an hour. Against this it is contended by the Respondent that it is

not necessary for the shore workers to report at the call point half an hour earlier. According to the Respondent, only the Assistant Shed Master and the Deployable Cargomen posted to work at the Labour Booking Section need be present at the call point half an hour earlier. According to the Respondent, they are required to be present half an hour earlier so as to do some preparatory work such as receiving the details of gang intended, assessing the requirements, ascertaining the posting roster, etc.

10. The General Secretary of the Petitioner Union has filed affidavit in support of the case. Even though the petitioner is the Secretary of the Union he seems to be ignorant of the details of the work carried out by the shore workers. He does not know if payment to the shore workers is time-rated. He does not know if datum is fixed by Government for each cargo. He does not know if piece rate incentive was being paid to the cargo workers from 1960 onwards. He does not know if manning scale is fixed by the Government for handling the cargo. He does not know if the number of workers posted for cargo handling is dependent upon the requirements. He has stated that the three shifts of work for shore workers start at 06.00 AM, 02.00 PM and 10.00 PM respectively. However, he does not know if a worker who reaches the port at the correct time also will be admitted for work. Thus it is clear from the evidence of WW1 General Secretary that he has no idea of work related to cargo handling at Chennai Port Trust.

11. Is there any direction for the shore workers to report for work half an hour earlier than the time for commencement of the work? Ext.M1, the Standing Orders for the Chennai Port Trust would show that for workmen the maximum limit for weekly hours of employment will ordinarily be 48. That means each worker has to work only 8 hours a day. Ext.M12 is the Traffic Manual, Volume-3 of Madras Port Trust dealing with Portage and General. Clause-1.39 giving details of labour booking section states that the ASM and the DCM working in the Section will attend to the booking of shore labour for work during each shift. The representative of the steamer agents are to tender requisitions in the prescribed form for the Trusts Shore Gangs required for loading and unloading of vessels and barges everyday before 12.00 Noon. The requisitions are to be forwarded to the Assistant Shed Masters. The Assistant Shed Masters are to note the particulars of Shore Gangs who report for work for each shift in a day according to their turns. As the gangs shall be given equal opportunity in employment for work and also equal turns for piece rate work to enable them to get fair earnings the Assistant Shed Masters shall always have the clear details before them regarding the number of turn in piece rate and time rate work offered to each gang and their piece rate earnings. For this purpose they are to maintain a register showing the details of work allotted shift-wise daily. They

shall also contact the sections and if necessary the representative of steamer agents and ascertain the type of cargos loaded or unloaded by vessels or barges at different berths. Clause-1.39, Sub-Clause-6 of the manual states that the ASMs and DCMs shall be present at the call point and commence the roll call at the counters at least half an hour before the commencement of each shift so that the shore labour could reach their work spots before the commencement of each shift. The petitioner was not able to point out any clause in the Manual directing the workers to be present at the call point half an hour earlier than the time of commencement of shift. In spite of this, the above Sub-Clause directing the ASMs and DCMs to be present at the call point half an hour earlier has been interpreted on behalf of the petitioner as requiring them also to be present at the call point half an hour earlier. There is no justification to such an interpretation. It could be seen from the Manual itself that the ASM and DCMs are required to do several things before they send each worker to the required point. As admitted by MW1, at times the actual place where the shore workers are to work will be 500 to 1500 metres away. But then they are not required to reach this actual place of work at the time of commencement of work itself. Probably, it is for the sake of convenience that the ASMs and DCMs who reach half an hour earlier are asked to commence the roll call. In spite of this, nowhere it is stated that the workers are to reach at the roll call point half an hour earlier. The presence of whichever worker who turns out for work at the roll call point will be recorded and he will be assigned the required work and sent to the actual place of work. At the same time even if the worker reaches the roll call point at 0600 AM, 0200 PM or 1000PM as the case may be they will not be recorded absent or sent away, but their presence will be recorded and they will be assigned work and sent to the place of work. From Sub-Clause-7 of Clause-1.39 it could be seen that it is only to expedite work that the ASMs and DCMs are asked to be present half an hour earlier. Sub-Clause-7 states that the roll call shall be taken expeditiously and in an orderly manner in the muster roll register and all the counters shall work simultaneously. As and when the attendance of the gang is taken, the allotment advice slip shall be handed over to the gang informing the point of posting. The registers shall be sent to the Portage Office at 1000 AM and is to be brought back at 0100 PM. This itself would show that until 1000 AM the workers are at liberty to report for duty and register their presence at the roll call point.

12. It is very much clear from the above that it is not necessary for the workers to report for duty half an hour earlier than the time of commencement of work. Again, as seen from the manual the work hours of the workers is only 8 hours. There is no provision to make them work overtime or pay any overtime wages. Even if all the workers report for work all of them will not be assigned work. Some

of the workers will be remaining idle even if they are on duty. Allotment of work will be on the basis of the requirement of work as informed by the Stevedors of the respective vessels. Both the on board workers who are not handling the work and also shore workers are paid monthly time rate salary irrespective of whether they are posted for cargo handling or not. The only difference is that when posted for cargo handling work as per the Stevedors requirement, they will be get an additional payment at piece rate incentive for handling cargo beyond the base tonnage i.e. datum. So in any case there is no justification for the demand made by the Petitioner Union. I find that the petitioner is not entitled to any relief.

13. On the basis of my above discussion, the reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th April, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri R. Santhanam
Petitioner Union

For the 2nd Party/ : MW1, Sri R. Kripanandasamy
Management

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	31.01.1972	Certificate of Registration of Trade Union
Ex.W2	14.07.2011	Strike Notice issued by the Petitioner Union to the Respondent Management
Ex.W3	19.07.2011	Letter by the ALC (Central)-I to the Petitioner Union and the Respondent Management
Ex.W4	08.08.2011	Letter from the Respondent Management to the ALC (Chennai)-I in response to the demands in the strike notice dated 14.07.2011.
Ex.W5	12.09.2011	Rejoinder by the Petitioner Union
Ex.W6	14.11.2011	Comments on the rejoinder by the Respondent Management
Ex.W7	28.11.2011	Further reply letter by the Petitioner's Union with its Enclosures

Ex.W8	24.02.2012	Letter of recognition of trade unions by the Respondent Management
Ex.W9	-	Pay slips of Employee No. 53946 D. Loganathan, Employee No. 54373 V. Ramakrishnan, Employee No. 542742 K. Shanmugham and P. Nagalingam

On the Management's side :

Ex.No.	Date	Description
Ex.M1	1967	Standing Orders of the Port of Madras, 1967
Ex.M2	1977	Standing orders of the Port of Madras (V Edition, Vol.II) 1977 (Appendix-A)
Ex.M3	07.12.1988	Standing Orders of the Port of Madras (V Edition, Vol.II) 1977 (Correction Slip No. 35)
Ex.M4	08.03.1996	Standing Orders of the Port of Madras (V Edition, Vol.II) 1977 (Correction Slip No. 42)
Ex.M5	-	A brief of the 60:40 posting pattern of CHD/Shore Workers
Ex.M6	-	A brief on the Piece Rate Incentive Scheme
Ex.M7	-	List of categories of Traffic Department coming under Piece Rate / Incentive Schemes
Ex.M8	August 2013 to Oct. 2013	Statement giving shift-wise on board and on-shore labour supply details based on indents placed by the Stevedors for cargo operations
Ex.M9	Oct. 2013	Copy of the salary slip of a five of the Mazdoors (S/L) for October 2013 reflecting the incentive paid
Ex.M10	-	A copy of the present datum and manning scale for shore workers
Ex.M11	Aug. 2013 to Oct. 2013	Shore Labour Men engaged statement giving details of total men reported for work, men on piece rate, men on time rate and percentage of men on time rate to total reported.
Ex.M12	1981	Traffic Manual Volume-3 Portage and General
Ex.M13	25.05.2001	Copy of memorandum of the settlement arrived on merger of

		Madras Dock Labour Board with Chennai Port Trust
Ex.M14	10.01.2014	Copy of Memorandum of Settlement under Section-18(1) of the ID Act 1947 arrived between Chennai Port Trust and the Trade Unions affiliated to federations signed in the wage settlement.
Ex.M15	31.01.2014	Addendum to the Memorandum of Settlement dated 10.01.2014
Ex.M16	28-04-2014	Check-off details.

नई दिल्ली, 7 जुलाई, 2014

का.आ. 1971.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 284/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था 1

[सं. एल-30012/04/93-आईआर (एम)/आईआर(सी-I)]

जोहन तोपनो, अवर सचिव

New Delhi, the 7th July, 2014

S.O. 1971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 284/99) of the Cent. Govt. Indus. Tribunal/Labour Court, Kanpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Oil Corporation Limited, and their workmen, which was received by the Central Government on 01/07/2014.

[No. L-30012/04/93-IR (M)/IR(C-I)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 284 of 99**Between :**

Sri Ram Dularey,
Son of Sri Paragi,
C/o Sunchit Shanker Asthana,
8, Faizabad Road,
Lucknow.

And

Chief Divisional Manager,
Indian Oil Corporation,
Kapoorthala Complex,
Aliganj,
Lucknow.

AWARD

1. Central Government, MoL, New Delhi, vide notification No. L-30012/04/93-IR Misc./IR C-1, dated 13.01.2000, has referred the following dispute for adjudication to this tribunal-

2. Whether Sri Ramayan Yadav and 14 other workmen (as per list enclosed) are the workmen of M/s. Indian Oil Corporation Limited? If so, were they entitled for regularization and from what date? What if any reliefs they are entitled to?

3. Brief facts are –

4. It is pertinent to mention that initially there was a reference only for Ram Dularey. Thereafter it was extended to one Sri Ramayan Yadav and 14 others as per list enclosed. But it was again extended and according to the list of 16 workmen including Ram Dularey.

5. Therefore, I am considering the last reference which is dated 01.06.04 for all purposes.

6. In this reference it has been sought whether Sri Ram Dularey and 15 other as per list were the workmen of M/s. Indian Oil Corporation Limited? If so whether their demand for reinstatement in service and regularization is justified? If so from what date?

7. It has been alleged by the claimant Sri Ram Dularey that he was appointed on 28.11.89 as Salesman at Gomti Nagar, sub-station owned and managed by the Indian Oil Corporation Limited, on a salary of Rs. 500 per month but the opposite party abruptly terminated his services without assigning any reason with effect from 01.08.91 without following the provisions of Section 25F of the industrial Disputes Act, 1947. It is also alleged that the opposite party subsequently engaged fresh hands in place of applicant without affording opportunity to the applicant in violation of Section 25H of the Act. Therefore, he has prayed that he should be reinstated on the post of Salesman with continuity of service.

8. Opposite party has filed the reply refuting the aversions of the claimant. It is also alleged that in the proceeding before the ALC only 5 person namely S/Sri Ram Dularey etc., as mentioned in Para 11 of the reply has joined as applicant. Therefore, the claim of the applicant is thus factually incorrect. It also mentioned that only two persons namely Sri Ram Bali Srivastava and Sri Ram Dularey had filed writ petition in the Hon'ble High Court. Similarly only Sri Ram Dularey had filed a SLP before the Hon'ble Supreme Court in his own capacity as an appellant.

No documents or evidence has been submitted by the applicant as to when he was engaged and removed. He has no right to be reinstated or regularized in the services of the Corporation. Therefore, he is not entitled for any relief.

9. Rejoinder has also been filed by the applicant but nothing new is mentioned therein.

10. Claimant has filed documentary the paper vide list 7/1. He has also filed 5 documents as annexure B.

11. Claimant has produced himself in evidence as Ram Dularey as w.w.1 on affidavit.

12. I have heard the arguments of the workman and perused the whole record.

13. It is a fact that the opposite party did not appear and adduced any evidence.

14. It is a claim where the applicant Sri Ram Dularey and 15 others have sought the regularization of service as well as reinstatement.

15. I have gone through the reference order and find that there is no date of termination in either of the reference whereas the claimant is claiming that he has been terminated on 01.08.91.

16. It is a fact that there is no appointment letter or termination letter in favor Ram Dularey or any other claimant. It is a fact that Indian Oil Corporation is a public body and they have rules and procedure to appoint any person on any sanctioned post. It is pertinent to mention that the claimant Sri Ram Dularey and 15 others as contended by them are claiming that they should be reinstated and regularized as they were working as salesmen at Gomti Nagar Sub Station. I would like to say that it is beyond imagination that at one stretch 16 persons were working as a sales man at the Petrol Pump run and maintained by the opposite party.

17. I have examined the photocopies filed by the claimant. There is no original document. Paper No.7/10-16 are alleged to be the bills prepared and issued to the customers. But I have myself has examined W.W.1, he stated in the cross that he does not know English. He is simply 5th class pass, he has not prepared any of these vouchers. Then who prepared it mostly written in English, no evidence has been adduced by the claimant, who prepared it. Similarly paper No. 7/17-20 are the photocopies, why the original have not been filed no explanation has been given. Similarly paper No. 7/21-24 are the records but who prepared it, it is not claimed that the workman has prepared it. Similarly the paper No.7/25-29 is the photocopy but who prepared it no evidence has been given.

18. Paper No.8/2-8/6, are the photo copies. It has been contended that some incident has taken place at the Petrol Pump and an FIR was lodged and in the FIR, the

name of Sri Ram Dularey appears to be as a witness. Showing him that he was working. I have examined these papers also. The workman could have obtained certified from the court and should have given some evidence that he remained in the employment of the opposite party on the date of alleged incident. Similarly I examined the paper no. 8/7-24, which are photocopies. I have also examined the content of the affidavit filed by the workman.

19. It has been held by the Hon'ble Apex Court in a number of cases that mere giving statement by a workman will not suffice that he had completed 240 days or more.

20. In this case also though there is no evidence from the opposite party, it is very difficult to conclude that the workman or the other workmen has completed 240 days and they were continuously working.

21. It is also to mention as stated in w.s. that initially there were only 5 workmen like Ram Dularey, Mahendra Chouhan etc., who have filed complaint before ALC.

22. I have examined the claim statement, from the beginning till end it appears that the claimant himself exclusively is filling the claim statement, but he has not whispered even a single word in the claim statement as to the claim statement is being filed on his behalf as well as on behalf of his colleagues. Then how in the array of party word "and others" which is found to be written in hand except a single word regarding others, there is nothing in the body of the claim statement that the claim statement is being filed on behalf of all the workmen and Ram Dularey is permitted by each of them to advance their grievance before the tribunal.

23. I have examined the names of workers given in the 1/10. There are 16 names but the evidence adduced by the workman as w.w.1 has not given in para 1 names of all these workmen like Ghanshyam Pathak. There is other variance also like Vijay Shanker mentioned in the list but W.W.1 has stated the name Vijai Bahadur Chouhan and likewise there is other variance also.

24. Opposite party in their w. s. has stated that initially there were only 5 names. I would also like to say that the initial reference was only in respect of Sri Ram Dularey.

25. Therefore, I have considered all the aspect of the case to the best of circumstances.

26. Reference is also not specific. There is variance in the list as well as names given by the workman in his affidavit. Claimant does not appear to be legally authorized to appear as a witness on behalf of his alleged colleagues as nothing has been whispered in the statement of claim on their behalf.

27. Initial burden lies on the workman to establish the fact that he had completed 240 days of continuous

service in a calendar year preceding the date of his termination. But the claimant failed to prove the same before the tribunal.

28. Regarding the second contention that fresh hands have been employed by the opposite party after the termination, I have fully examined this aspect of the matter, there is no cogent evidence on behalf of workman to prove violation 25 H of the Act.

29. Therefore, the reference is answered in negative in favor of the workman and in affirmative in favour of the management.

30. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 7 जुलाई 2014

का.आ. 1972.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.एस. आई.सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था।

[सं. एल-17012/4/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 7th July, 2014

S.O. 1972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012) of the Cent. Govt. Indus. Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of E.S.I.C. and their workmen, which was received by the Central Government on 01/07/2014.

[No. L-17012/4/2011-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, CHENNAI

Tuesday, the 17th June, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 28/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947),

between the Management of ESI Corporation and their workman)

Between :

Smt. E. Chengammal : 1st Party/Petitioner

And

1. The Regional Director : 2nd Party/1st Respondent
ESIC, Regional Office
Sterling Road,
Chennai-600034
2. The Branch Manager : 2nd Party/2nd Respondent
ESIC, ESIC Dispensary
Compound Puzhal,
Chennai-600066

Appearance:

For the 1st Party/
Petitioner : Sri D. Muthukumar,
P. Ganeshram, K. Garbashev,
Advocates

For the 2nd Party/
1st and 2nd Management : Sri C.V. Ramachandramurthy,
Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/4/2011-IR(M) dated 14.03.2012 and Corrigendum dated 20.04.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of M/s. ESIC, in terminating the services of Smt. Chengammal, Sweeper w.e.f. 10.02.2010, is legal and justified? What relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 28/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined duty as Sweeper with the Second Respondent on 01.03.1972 for salary of Rs. 3/- per month. She had to report daily at 0800 AM to the Second Respondent dispensary and work till 0530 PM. She was doing sweeping and cleaning of the premises, carrying files and also buying tea coffee etc. for the officials of the Second Respondent. On 10.02.2009 the petitioner was illegally terminated from service without any reason. She requested the Second Respondent to reinstate her in service. On 01.07.2009 the Second Respondent gave an order appointing the petitioner as Part-Time Sweeper from

01.07.2009 to 30.06.2010 for a fixed pay of Rs. 500/- per month. Though the petitioner joined duty on 01.07.2009 she was terminated by the Second Respondent on 31.10.2009 without assigning reason. The petitioner was drawing salary of Rs. 1,000/- at that time. The petitioner gave a representation to the First Respondent on 11.02.2010. The First Respondent asked the Second Respondent to take action on the representation of the petitioner. In spite of this, the petitioner was not reinstated in service. The petitioner had been working with the Second Respondent with utmost sincerity. She should not have been terminated by the Respondents. The termination of the petitioner is in violation of the relevant provisions and is against principles of natural justice. The Respondent shall be directed to reinstate the petitioner in service with back wages, continuity of service and other benefits.

4. The Respondents have filed Counter Statement contending as follows:

The petitioner was engaged by the Branch Manager of the Second Respondent as Part-Time Sweeper and Scavenger whenever required. She is not a workman of Second Respondent as defined under Section-2(s) of the ID Act. The nature of the work was to sweep the office premises for about 25 minutes in the morning before the normal working hours started. It was decided to outsource the working of housekeeping of all the branches falling under the Region of Chennai with effect from 01.01.2010 and consequently engagement of sweeper / scavenger by Branch Managers were dispensed with. At present the work of housekeeping is carried out by private agency and is monitored by Regional Office. The petitioner was not a full time employee of the First Respondent. She was engaged for a limited period only. She was paid @ Rs. 500/- during the months from August to December 2009. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and Deputy Director of ESI Corporation as MW1 and the documents marked as Ext.W1 to Ext.W4 and Ext.M1 to Ext.M3.

6. The points for consideration are :

- (i) Whether the action of the Respondents in terminating the service of the petitioner is legal and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

7. The petitioner has claimed in the Claim Statement that she has been working with the Second Respondent as Sweeper from the year 1972. She has stated that she was terminated from service w.e.f. 10.02.2009 without assigning any reason. According to her, she was doing

work for the Second Respondent for all the years starting from 0830 in the morning till 0530 in the evening. The petitioner has filed affidavit reiterating her case in the Claim Statement and has submitted to cross-examination.

8. Of course, no documentary evidence is available to prove the case of the petitioner that she has been working with the Second Respondent from the year 1972, as claimed by her. The documents produced by the petitioner in support of the case are of the year 2009 and 2010. Ext.W1, a letter issued by the Joint Director of the First Respondent shows that a complaint has been given by the petitioner and that the Joint Director has written to the Second Respondent to take necessary action. It is seen from Ext.W2 that the petitioner has been appointed as Part Time Sweeper on temporary basis for a period from July, 2009 to June, 2010 for a remuneration of Rs. 500/- per month. Ext.W3 is the letter by the Branch Manager to the petitioner stating that the housekeeping contractor has provided worker with effect from January, 2010 through the Regional Office and therefore the appointment of the petitioner was terminated with effect from 31.12.2009 as per instruction from the Regional Office. The letter asserts that the appointment of the petitioner is purely on temporary basis.

9. Though there is absence of documentary evidence on the part of the petitioner to prove that she has been working with the Second Respondent from the year 1972 there is the admission on the part of the Respondents which would show that she had worked with the Second Respondent for a considerably long period. Even in the Counter Statement filed by the Respondents, the claim of the petitioner that she has been working with the Second Respondent from the year 1972 is not specifically denied. On the other hand there is sufficient indication in the Counter Statement that she was working with the Second Respondent much prior to the appointment by Ext.W2. What is stated in the Counter Statement is that she was engaged by the Branch Manager as Part Time Sweeper and Scavenger whenever required. There is no case in the Counter Statement that this engagement did not start from the year 1972. It is also clear from the Counter Statement that she had worked with the Second Respondent until her employment was terminated consequent to the decision of the First Respondent to engage persons for housekeeping on contract basis.

10. Though MW1 examined on behalf of the Respondents had claimed that he is acquainted with the case, it is clear that he does not have any personal knowledge of the engagement of the petitioner. He has admitted during his cross-examination that he does not know when the petitioner was engaged. He stated that the Branch Managers were authorized to engage persons like the petitioner. He stated that the Branch Manager might be knowing who had engaged the petitioner. He also stated that he does not know if the petitioner was working from

1972. So also he does not know for how many years the petitioner had worked with the Second Respondent. He also stated that he does not know if she had worked with the Second Respondent as Sweeper and Scavenger for 30 years. In such circumstances, in the wake of the admission of the Respondents in the Counter Statement and also the evidence given by the petitioner, there is nothing improper in assuming that the petitioner must have been working with the Second Respondent for a long time as Sweeper and Scavenger until she was terminated from service in the year 2010.

11. One contention that has been raised by the Respondents is that the petitioner was engaged whenever required only, that her work was only to sweep the office floor for about 25 minutes and that she was not an employee of ESI Corporation at all. On the basis of this it is also contended on behalf of the Respondents that the petitioner was not a worker as defined in the Industrial Disputes Act. In answer to this, the counsel for the petitioner has referred to the decision of the Apex Court in DEVINDER SINGH VS. MUNICIPAL COUNCIL, SANAUR reported in 2011 6 SCC 584. In this the Apex Court has held that the source of employment, the method of recruitment, the terms and conditions of employment / contract of service, the quantum of wages / pay and the mode of payment are not at all relevant for deciding whether or not the person is a workman within the meaning of Section-2(s) of the ID Act. It was further held that the definition of the term “workman” in the ID Act does not make any distinction between full time and part time employee or a person appointed on contract basis. It was further held that there is nothing in the plain language of Section-2(s) of the ID Act from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

12. In the light of the above dictum laid down by the Apex Court there can be no doubt that the petitioner was a workman as defined in Section-2(s) of the ID Act under the Respondents. Even as admitted by MW1 the concerned Branch Managers were authorized to engage Sweepers for their premises. It is clear that it was on this basis the petitioner was appointed by the then Branch Manager of the Second Respondent Branch for sweeping the premises and doing the work of scavenging.

13. It is admitted by the Respondents that the petitioner was terminated from her job since they have decided to engage persons on contract basis for housekeeping. There is no case for the Respondents that the petitioner was given any compensation under Section-25F of the Act before her termination. Though the relief claimed by the petitioner is reinstatement in service,

she is not eligible for such a relief at present, she having crossed the age of 60 years. She has given her age as 59 years in her affidavit of examination and 60 years during her cross-examination. So there cannot be a direction to put her back in service. However, she is entitled to compensation for the termination which was not in compliance of Section-25(F) of the Act.

14. It is clear from the admission made by the petitioner during the cross-examination itself that the work done by the petitioner for the Second Respondent was not a full time job. She has admitted during her cross-examination that she used to work for the Respondent in the morning, go back and again come and attend her work in the evening also. She has also admitted that in the time in between she used to sell tiffin to augment her livelihood. This admission by the petitioner very well shows that she had been working with the Second Respondent only for a limited time and not for the whole day. This is reflected in the amount of salary given to her also. As seen from Ext.W2 when she was appointed again consequent to her complaint in July, 2009 itself she was offered a fixed salary of Rs. 500/- only. She has stated that she was getting Rs. 1000/- at the time of her termination. However, it is unlikely there was a hike in her remuneration within such a short period. The time of work of the petitioner also is to be taken into account while deciding the compensation due to the petitioner. In the normal course, she was entitled to one month's pay and 15 days salary for each year she had worked. Even in the case of reinstatement she would have been able to work only for two more years. Taking all these into consideration, the compensation for the petitioner is fixed as Rs. 30,000/-.

15. The First Respondent is directed to pay the petitioner Rs. 30,000/- towards compensation within a month. If the amount is not paid within the period, it will carry interest at the rate of 9% per annum.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Smt. E. Chengammal
For the 2nd Party/ : MW1, Sri S. Karuppusamy
1st & 2nd Management

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	15.04.2009	Letter sent by the First Respondent Corporation
Ex.W2	01.07.2009	New Appointment letter sent by 2 nd Respondent

Ex.W3	26.04.2010	Letter sent by Respondent
Ex.W4	06.05.2010	Letter sent by the Petitioner to Deputy Chief Labour Commissioner (Central)

On the Management's side

Ex.No.	Date	Description
Ex.M1	30.04.2010	Office Memorandum of Department of Personnel and Training
Ex.M2	24.06.2011	Recruitment Rules of ESI Corporation
Ex.M3	-	Documents relating to outsourcing of Housekeeping of ESI Corporation.

नई दिल्ली, 7 जुलाई 2014

का.आ. 1973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तमिलनाडु सीमेंट्स कॉरपोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 97/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था।

[सं. एल-29011/36/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 7th July, 2014

S.O. 1973.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tamil Nadu Cements Corporation Limited, and their workmen, which was received by the Central Government on 01/07/2014.

[No. L-29011/36/2012 - IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Monday, the 16th June, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 97/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of

Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between Management of Tamil Nadu Cements Corporation Ltd. and their workman)

Between:

1. The General Secretary, : 1st Party/
Alangulam Socialist : 1st Petitioner Union
Thozhilalar Sangam (HMS)
Tamil Nadu Cements
Alangulam,
Virudhunagar District
2. The President, : 1st Party/
Anna Thozhilalar Sangam : 2nd Petitioner Union
Tamil Nadu Cements &
Kalsurangam
Alangulam-626127
(Via) Rajapalayam
Virudhunagar District

And

The Deputy General Manager : 2nd Party/
Tamil Nadu Cements : Respondent
Corporation Ltd.
Alangulam Works
Tamil Nadu Cements
Post-626127

Appearance:

For the 1st & 2nd Party/ : Sri SV Subramanian and
Petitioner Union : Sri R. Muruganandam,
Advocates

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
Management : Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-29011/36/2012-IR(M) dated 07.12.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Tamil Nadu Cements Corporation Limited (TANCEM), Alangulam in respect of the existing service condition, annual increment etc. not extending to the re-deployed employees of TANCEM is legal and justified? If not, to what relief the redeployed employees of TANCEM are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 97/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioners in brief are these:

The Tamil Nadu Asbestos Company had decided to transfer 30 of its employees to Alangulam Cement Factory

on the basis of its work requirement, by notice dated 08.03.2010. On the basis of the notification issued by the Company employees belonging to the Petitioner Unions had applied and they have joined the Alangulam Cement Factory and were working there continuously. The petitioners have given a representation to the Respondent on 19.09.2011 seeking certain benefits for the above employees. Except the demand for bonus other demands were not met with. The Respondent has stated that the matter would be discussed with the Unions and a decision would be taken. Since the Respondent failed to take a decision representations were given on 21.11.2011 and on 22.12.2011 emphasizing three of the demands. The grade of employees from Tamil Nadu Asbestos has to be upgraded since they have worked for more than 30 years. The increase in the grade has to be at par with Tamil Nadu Cements Employees. Secondly the employee from Tamil Nadu Asbestos should be given the same leave leverage and benefits like the workers working in the Cement Factory. If this is implemented the employees will be entitled to one day leave for every 11 working days. The increment in the salary directed by the Wage Board should be implemented for the employees from Tamil Nadu Asbestos Company also. Apart from these, the wage revision has to be implemented to the employees who were taken from the Asbestos Company as per the terms of settlement dated 15.05.2011. The annual increment in the salary and other benefits also are to be given to the employees who were taken from the Asbestos Company. There shall be a direction to the Respondent to grant all the benefits claimed by the petitioners in their representation dated 22.12.2011.

4. The Respondent has filed Counter Statement contending as follows:

There has always been a huge difference in the wages paid to the workman of Alangulam Cement Factory and Asbestos Factory at Alangulam. In the Cement Factory the workmen were to be considered for upgradation once in 5 years while in the Asbestos Factory it was varying from once in 6 years to 12 years depending upon their category. While the workmen of Alangulam Cement Factory were granted Earned Leave calculated at 1 day for every 17 days work, in the case of Asbestos Factory the workmen were entitled to leave benefits as per the provisions of Factories Act only. In the year 2009 the Second Petitioner Union had made a demand to consider the workmen of Asbestos Plant for the vacancies in the Alangulam Cement Factory. A committee was constituted to discuss the demand and it was decided that such of those who were considered for re-deployment to Cement Plant will be taken after training for one year and that they will not be considered for any concession privilege or benefit that were available to the workmen of the Cement Plant. The workmen had agreed to this also. Accordingly, notices were put up in the notice board giving option to

the employees of the Asbestos Plant who were prepared to accept the terms for re-deployment to Cement Factory. On the basis of applications received 74 employees from Asbestos Plant were taken for employment in Tamil Nadu Cements. By reason of their employment in the Cement Factory they got an increase from Rs. 3,040/- to Rs. 4,200/- in their salary. After completion of one year deputation/training they were absorbed with the basic wages fixed in the scales of wages propounded by the Wage Board. So the next annual increment became due only after 12 months after date of absorption. On 26.12.2001 the petitioners had raised Industrial Dispute claiming upgradation once in 5 years as in the case of other employees in the Cement Plant and also for privilege leave similar to the workers in the Cement Plant. The demands were not justified as it was in violation of the undertaking given by them when they were sent on deployment. If the employees were not satisfied with the service conditions applicable to them in the Cement Plant they could opt for reversion to the Asbestos Plant. They could not be considered for parity alongwith other workers of the Cement Plant nor they could be compensated for the loss of one increment in the process of re-deployment. The redeployment of the employees were done on the basis of the representation made by them and not because of exigencies of the administration of the Respondent. The Cement Plant was already running on loss and it was only on humanitarian grounds the 74 employees were deployed. At the time of redeployment it was explained to them that in the matter of leave benefits and upgradation they would continue to be covered under the 7 years policy and that they will be entitled to leave benefits as per the provisions of the Factories Act. The reasons given by the petitioners in support of the demands are not tenable. The claim is liable to be rejected.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W13 and Ext.M1 to Ext.M22.

6. The points for consideration are:

- (i) Whether the demands made by the petitioners on behalf of the employees re-deployed to the Respondent Corporation are justifiable?
- (ii) What is the relief, if any, to which the petitioners are entitled?

The Points

7. The Tamil Nadu Asbestos Company at Alangulam and the Tamil Nadu Cement Plant at Alangulam were running in the same premises. In the year 2010 some of the employees of the Asbestos Plant were re-deployed to the Cement Plant. This re-deployment is said to have been on the basis of certain restrictions put on the employees. According to the Respondent the Cement Plant as well as the Asbestos Plant were facing severe problems. In the Cement Plant which was having a workforce of 1450 earlier the number was brought down to 267 by 2013. The

operation of the Asbestos Plant also was affected and the plant had not been working for many days in the year 2009 and 2010. According to the Respondent, the workmen of the Asbestos Plant who were afraid of a total closure of the plant had made a demand to the Second Petitioner Union to consider re-deployment of the workmen of Asbestos Plant to the Cement Plant. A committee constituted for this purpose had decided to take in a certain number of employees from the Asbestos Plant to the cement Plant on certain conditions. It is accordingly, 74 employees from Tamil Nadu Asbestos Plant are said to have been re-deployed in the Tamil Nadu Cements at Alangulam.

8. The Petitioner Unions had raised industrial dispute on 26.12.2011 claiming certain benefits which according to them would bring the employees from Asbestos Plant in par with the other employees of the Cement Plant. In the representation given by the petitioners they have stressed on three demands, that their grade is to be upgraded in par with the other employees of the Cement Plant, that they should be given same leave leverage and that they should be given increment as directed by the Wage Board. In the Claim Statement they have raised two more demands, one that the wage revision has to be implemented at par with the employees now inducted into service, as stated in the terms of settlement dated 15.05.2011 and secondly that their annual increment and other benefits has to be given.

9. The Respondent justifies its stand of leave leverage and other benefits on the basis that the employees who were re-deployed had given an undertaking that they will not be claiming any benefit in par with that of the existing employees of the Cement Plant. According to the counsel for the petitioners the employees were not made aware of the exact consequences of the undertaking which was in English and they had blindly put their signatures to this undertaking. It has also been argued by the counsel for the petitioners that in any case the undertaking will be applicable to them only for the period during which they were on probation/training and on their absorption as employees of the Cement Plant after this they stand on par with the other employees.

10. Ex.W5 is the notice that was exhibited in the Notice Board of the Asbestos Plant stating that the Tamil Nadu Asbestos Plant has decided to transfer 30 workers to Tamil Nadu Cements Alangulam Unit on need basis. The notice called for applications from the workers on certain terms and conditions. Condition No. 4 in the notice is to the effect that the transferred workers will be placed in the junior-most level in equal category. Condition No. 5 states that the workers who are transferred to the Cement Unit will be getting their existing Asbestos Plant Salary and other benefits during their probationary period of one year. Condition No. 6 states that the Cement Wage Board salary will be fixed after finishing the successful completion of the probationary period. There is another condition

that if the Management is not satisfied with the work of the transferred workers during the probationary period they will be reverted back to Asbestos Unit. From the conditions above one would come under the impression that the transferred workers will have to satisfy with the salary they were drawing in the Asbestos Unit during the probationary period and on expiry of this period on their absorption in the Cement Unit their salary would be fixed in accordance with the scale prescribed by the Cement Wage Board. There is nothing in the notice to make out that there will be any restriction in the wage and other conditions for the transferred workers, once they are absorbed in the Cement Unit. The only restriction as revealed from the notice is that the transferred workers will be placed as the junior-most among their equal category.

11. The case of the petitioner is that the transferred workers were denied upgradation / promotion, annual increment, leave facilities and also pay at par with the existing employees of Cement Unit. According to the counsel for the petitioner once the transferred workers are absorbed within the Cement Unit they are entitled to all the benefits that are available to the other workers of the Unit. They cannot be discriminated from the other workers. It is pointed out that while the existing workers were given upgradation and promotion once in 5 years the Transferred workers are given the same once in 7 years. So also when the existing workers are given one day leave for every 11 working days, the transferred workers get one day leave for 17 working days only. So the increment is also said to be not at par with the other employees as directed by the Wage Board.

12. The argument for the counsel for the Respondent is based on the undertaking said to have been given by the workers at the time of the transfer. The Memorandum of Undertaking given by the employees who were transferred from the Asbestos Unit to the Cement Unit is marked as Ext. M15 (series) and the undertakings obtained from the transferred workers are included in the series. The purport of all these are one and the same. Condition No. 3 in the undertaking is that the worker will not raise any dispute on the basis of anomaly in pay comparing with the existing employees or anomaly in seniority for giving promotion / upgradation for any career prospects comparing the existing employee on roll in the Cement Unit as he is covered under 7 years policy of upgradation/ promotion. Condition No. 4 is that the worker agrees that he will be eligible for leave facilities only as per the Factories Act on absorption and will not raise any dispute in this regard comparing other employees. There are also other conditions which are not relevant for the purpose of the case.

13. It has been argued by the Counsel for the Petitioner that the undertaking are all in English while Ext.W5 notice was in the vernacular, that none of the

workers had understood the purport of the under taking taken from them, that they were made to sign in a hurry and they were not in a position to understand the same. Certainly, I am not able to accept this argument of the counsel. Transfer of certain workers from the Asbestos Unit to the Cement Unit was on the basis of the representation made by the workers also and all the concerned workers had signed the undertakings. These undertakings are on different dates also. Even then it was a collective affair and there was sufficient support for the workers who were being transferred. So putting their signature in the undertaking could not have been something done in a hurry without understanding the purport. In any case not even one of the concerned workers are examined also to justify the claim.

14. In spite of the above situation, the stand taken by the Respondent to deny certain benefits to the transferred workers could not be a valid one. By Ext.W5 notice the workers were made to understand that once their probation period is over and they are absorbed in the Cement Unit they will be having the same status as that of the existing employees of the Cement Unit though their status would be that of the junior most among the equal category. It could be seen that though the term used is transfer the workers were actually replanted into the Cement Unit and it was as if new appointment is given to them in the Cement Unit that is why they were being placed as the junior most in the particular category. They were made to believe by the notice that once they are absorbed in the Cement Unit they will be entitled to salary as in the case of existing employees.

15. So far as salary is concerned there seems to have been some benefit for the concerned workers. It has come out during cross-examination of WW1 that there was hike in the salary of each and every workers who were taken in the Cement Unit. However, the Respondent refused to being them in par with the existing employees so far as leave benefits and upgradation scope were concerned. Certainly, there is discrimination in this treatment of the workmen by the Respondent. The Respondent cannot take shelter under the undertaking said to have been obtained from the workers to deny the benefit to them. After absorption they were doing the same kind of work that were done by the existing workers of the Cement Unit. Merely, because they happened to be taken from the Asbestos Unit which was having lesser wage scale it could not have taken advantage of by the Respondent to deny the benefits to the transferred workers. The counsel for the Petitioner has referred to the decision of the Apex Court in *FCI AND OTHERS* reported in 2009 2 SCC(L&S) 413 in this respect. In the above case earlier the FCI had taken several employees of Central Govt. on permanent transfer basis. The Central Government Employees were given one advance increment on their permanent transfer. Subsequently, some employees of the State Government

also were absorbed in the FCI. But the benefit of advance increment was denied to the employees from State Government. This was challenged by them and the High Court had found that the treatment of the erstwhile employees of the State Government is discriminatory. The FCI had approached the Apex Court challenging this order. While dismissing the appeal of the FCI the Apex Court has held that different treatments meted out to the erstwhile State Government Employees vis-a-vis Central Government Employees although drawn from the separate cadre for the purpose of grant of benefit to one class only would amount to discrimination. The Apex Court further held that in the case of both Central Government and State Government Employees common regulation would bind them. It cannot be accepted that valid classification could be made and different treatment could be given to Central Government Employees and the employees absorbed from State Government, it was held. It was further observed that in the case of this nature legal right of the employees emanated from violation of equality clause of Article-14 and that if they were otherwise similarly situated, there was no reason why having regard to Article-39A of the Constitution Respondent should be treated differently. It is not a case where persons differently situated are being treated differently and there is gross arbitrariness on the part of the Appellant, the Apex Court has again held.

16. The above dictum laid down by the Apex Court is squarely applicable to the facts of the present case. Merely because the aggrieved workers were brought from another Unit, they did not deserve the discriminatory treatment meted out by them at the Cement Unit. Even from the admission made by MW1 the Deputy Manager examined on behalf of the Respondent it is clear that after the workers have become employees of the Cement Unit the Wage Board award is applicable to them. MW1 has admitted that for the same cadre same wages will be paid and there will no two different sets of payment. This must be true regarding the other benefits also. So the workers are entitled to the benefit claimed through the petitioners. They will be entitled to the same status alongwith the other workers upon completion of their period of probation and on their absorption in the Cement Unit. They will be entitled to upgradation / promotion benefits, leave benefits, increment, etc. in par with the other workers. Accordingly, an award is passed as follows:

“The Respondent shall consider the transferred workers in par with the other workers for upgradation / promotion.

The Respondent shall also provide leave benefits to the transferred workers similar to that of the other workers.

The transferred workers will also be entitled to increment in par with the other workers”.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri K. Mookaiah
For the 2nd Party/Management : MW1, Sri A. Baskar

Documents marked

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	19.08.1983	Memorandum of Settlement before Asstt. Labour Commissioner, Madras
Ex.W2	26.06.1985	Memorandum of Settlement before Asstt. Labour Commissioner, Tiruchirapalli
Ex.W3	10.09.1997	Settlement between the claimant and the opposite party
Ex.W4	05.11.2008	Memorandum of Settlement before Asstt. Labour Commissioner
Ex.W5	08.03.2010	Notice for transfer of employees from Tamil Nadu Asbestos to Tamil Nadu Cements
Ex.W6	-	Memorandum of Undertaking given by the employee at the time of induction
Ex.W7	15.05.2011	Memorandum of Settlement dated 11.02.2011 being implemented
Ex.W8	21.10.2011	Resolution by the Claimant No. 1
Ex.W9	25.12.2011	Representation by Claimant No. 1 to the Asstt. Labour Commissioner, Madurai
Ex.W10	07.01.2012	Remarks by the opposite party
Ex.W11	28.05.2012	Remarks by the opposite party
Ex.W12	29.06.2012	Report of the Asstt. Labour Commissioner, Madurai with enclosures
Ex.W13	-	List of workers, employees who will be benefitted if the demands are met

On the Management's side

Ex.No.	Date	Description
Ex.M1	2006 April/ March 2012	Alangulam Cement Works, Alangulam (TNCCEM) – Balance Sheet – Extract – and Profit and Loss A/c statement for the year 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 and Profit and Loss A/c Statement for 2011 to March 2012

Ex.M2	1998/ May 2012	Statement of number of employees left Alangulam Cement Works under VRS – Yearwise between April 1998 to July 2013			Cement, Alangulam in response to notice of T.N. Asbestos dated 08.03.2010
Ex.M3	1998/ July 2013	Number of employees left Alangulam Cement Works due to Retirement, Resignation and death between 1998 and July 2013	Ex.M13	2010/2011	Transfer proceedings issued to 30 employees from Asbestos (Sheets) to Cements – Proceedings–Alangulam
Ex.M4	18.01.2008	GO (D) – No. 28 dated 18.01.2008 – of TN Govt. – granting permission to close down Tamil Nadu Asbestos (Pipes) works at Mayanur (Unit of TANCEM) and to explore the feasibility of providing alternative employment to the remaining 54 workers in other units of TANCEM	Ex.M14	15.05.2010	Minutes of meeting of the Management of T.N. Cements, Alangulam and T.N. Asbestos (Sheet), Alangulam
Ex.M5	-	Statement of the number of days, the Alangulam Asbestos (Sheet) did not work in the years 2009 and 2010 and till March 2013	Ex.M15	-	Memorandum of Undertaking given by 74 employees of T.N. Asbestos (Sheet) on their seeking employment in T.N. Cement Works, Alangulam
Ex.M6	29.07.2009	Letter from Cement Pirivu Anna Thozhir Sangam, Tamil Nadu Asbestos Anna Thozhir Sangam, Alangulam to Manager, Tamil Nadu Asbestos, Alangulam	Ex.M16	05.11.2008	Settlement u/r section-12(3) of ID Act – before the Special Deputy Commissioner of Labour (Incharge) T.N. Govt., Chennai-6
Ex.M7	08.12.2009	Minutes of meeting between the Management of Tamil Nadu Cement Works, Alangulam and Tamil Nadu Asbestos (Sheet) Alangulam	Ex.M17	-	Statement showing list of 74 employees joined in Tamil Nadu Cements from Tamil Nadu Asbestos to undergo training in Cement Works and the date on which they were absorbed in Cement Works
Ex.M8	12.01.2010	Minutes of Meeting between the Management of Tamil Nadu Cement Works, Alangulam and Tamil Nadu Asbestos (Sheet) Alangulam	Ex.M18	-	Statement showing the total salary of each employees received on absorption in T.N. Cements works and their last drawn salary in T.N. Asbestos (Sheet) and the increase in salary in each case, on absorption in Cement Works
Ex.M9	01.11.2010	Letter from Tamil Nadu Cement Corporation Ltd., Chennai to DGM, Alangulam Cement Works, Alangulam	Ex.M19	15.05.2011	Proceedings of T.N. Cements Corporation Ltd., Chennai – No. 1537/A4/2011 – on the terms of settlement
Ex.M10	01.03.2010	Letter from T.N. Cements Corporation Ltd., Chennai to DGM – Alangulam Works, Alangulam and to DGM – Tamil Nadu Asbestos (Sheet) Alangulam with a copy of letter no. 498/PL/1/09 dated 28.01.2010	Ex.M20	26.12.2011	Letter from ALC(C) Madurai enclosing representation from Alangulam Socialist Thozhilalar Sangam to Asstt. Labour Commissioner – Central – Madurai-2 – 2k enclosing copy of 2K petition of the Sangam
Ex.M11	08.03.2010	Notice of the Tamil Nadu Asbestos, Alangulam establishment addressed to its workmen	Ex.M21	14.07.2011	Proceedings No. 498/PL/1/09 reg. N. Ramachandran absorption at Tamil Nadu Cements Corporation Ltd., Alangulam
Ex.M12	March 2010	Request letter from 29 employees of Tamil Nadu Asbestos, Alangulam of expressing willingness to work in T.N.	Ex.M22	17.12.2011	Letter – proceedings No. 498/PL-1/09 dated 17.12.2012 – reg. T. Ravindran – Absorption at T.N. Cements Corporation Ltd., Alangulam.

नई दिल्ली, 7 जुलाई, 2014

का.आ. 1974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मलाजखंड कॉपर प्रोजेक्ट, बालाघाट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 3/84) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 प्राप्त हुआ था।

[सं. एल-43011/04/81-डी. III(बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 7th July, 2014

S.O. 1974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/84) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Malajkhand Copper Project, Balaghat, and their workmen, received by the Central Government on 01/07/2014.

[No. L-43011/04/81 - D-III(B)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/3/84

Presiding Officer: SHRI R. B. PATLE

The General Secretary,
Bhartiya Khanij Mazdoor Sangh,
Post Office Malajkhand,
Distt. Balaghat (MP)

...Workman/Union

Versus

General Manager,
Malajkhand Copper Project,
Post Office Malankhand,
Distt. Balaghat (MP)

...Management

AWARD

Passed on this 27th day of January, 2014

1. As per letter dated January 1984 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-43011(4)81-D.III(B). The dispute under reference relates to:

“Whether the demand of the workers of Malajkhand Copper Project of Hindustan Copper Limited, Post Office Malajkhand, Distt. Balaghat (MP) for ex-gratia payment in lieu of bonus is justified. If so, what should be the quantum of ex-gratia payment and the accounting year(s) for entitlement?”

2. After receiving reference, notices were issued to the parties. General Secretary, Bhartiya Khanij Mazdoor Sangh submitted Statement of claim on behalf of the employees working in the establishment of IInd party. Case of Ist party Union is that it is representing workmen of Malajkhand Copper project, Hindustan Copper Limited pertaining to payment of ex-gratia in lieu of compulsory bonus. That Hindustan Copper Limited is Government Company registered under Company's Act. That M/s. Hindustan Company Limited have various establishments throughout India. The establishment are in public sector defined under Section 2(16) of Payment of Bonus Act. Those establishments are completely controlled by Head Office. They are working under the direct supervision of the Head Office. Hindustan Copper Limited was established in the year 1967 and has completed more than 5 years in existence. That single balance sheet is prepared for the Hindustan Copper Limited as a whole and there are no separate balance sheet for its different units including the Malajkhand unit. That balance sheet of company are termed as the annual reports on the working and affairs of the company as laid down under Section 619(a) of the Company's Act. The annual reports are in substance Profit and Loss Account of the company. The Hindustan Copper Ltd. also issues single audited annual report every year for the affairs of all its units consolidately. That Malajkhand Copper Project is an extension of the working of the company Hindustan Copper Project. It is not separate establishment or a newly set up establishment within the meaning of proviso to Section 3 of the Payment of Bonus Act. Section 16 of the Bonus act is also therefore not applicable to the Malajkhand Copper Project. There is a single Board of Directors for the Hindustan Copper Limited as a company at their own. Workmen and officers can be transferred from one branch or unit to another.

3. That Malajkhand Project of HCL is mainly a mining project. The copper ore from the Malajkhand Copper Mines after being extracted and concentrated is sent to Khetri Branch for its further processing. Khetri Branch is also part and parcel of the Hindustan Copper Limited. Thus in no way the work of Malajkhand Copper Project is independent in itself regarding production, processing, extracting the copper. That HCL being the Government company and non-competitive establishment, though as per provisions of Section 20 of Payment of Bonus Act, bonus is not payable. But as per orders of Finance Ministry of govt. of India, ex-gratia payment is made to the employees on the basis of calculation made on the basis of Payment of Bonus Act. The workmen of newly

opened mines of the Government Coal companies like WCL are being paid ex-gratia bonus at the rate of 8.33 % and they are not treated as separate or newly set up establishments. That as per the settlement of the Industrial Dispute dated 4-11-78 before the Regional Labour Commissioner (Central), Hyderabad, minimum statutory bonus as ex-gratia was paid to the workmen of the Deposit No.5 of Bailadila Iron Ore Project had not completed 5 years of its working. The working of the Malajkhanda Branch of the Hindustan Copper Limited had been started officially since 1978 after clearance from the Ministry. Though workmen of other units and branches of Hindustan Copper Limited were not paid the same. The Union had submitted its demand vide letter dated 25-10-80 to the General Manager, Malajkhanda Copper Project. On refusal by the management, the Union raised an Industrial Dispute. On failure of conciliation, report was submitted to Govt. and the dispute has been referred. The union is claiming payment of 8.33 % of ex-gratia compulsory bonus to the employee of Hind party.

4. Hind party filed Written Statement at Page 5/1 to 5/6. Hind party submits that HCL is a company registered under the Company's Act with its headquarters at Calcutta. The company has various independent projects situated at Khetri Copper Complex, Chandmari Copper Project and Dariba Copper Project in Rajasthan, Malajkhanda Copper Project in Madhya Pradesh, Indian Copper Complex, Ghatsila in Bihar and Rakha Copper project in Bihar. That each of the project is independent of each other with its independent administration. That Malajkhanda Copper project is biggest base metal (Copper) Open Pit Mine in India at Baihar Tehsil of Distt. Balaghat. Government's sanction for the project was obtained in June 1977 and stripping operation was started in August 1979. That BhartiyaKhanijMazdoorSangh vide letter dated 11-12-1980 addressed to the Chief Labour Commissioner, New Delhi and Assistant Labour Commissioner made a demand for payment of bonus. After failure of conciliation, dispute has been referred. Hind party submits the reference is bad in law as no dispute existed at the time of reference. The matter referred for ex-gratia payment is outside the terms of employment and cannot be industrial dispute. Therefore the reference is beyond jurisdiction of this Tribunal.

5. That Payment of Bonus Act 1965 is complete code in itself. The right to bonus is created under the Act. A specific remedy is also provided under the said Act. Rule 10(1) is impermissible. Attention is invited to ratio held in different cases. It is contended that reference is not tenable. It is also contended that the reference is discriminative as reference is made in respect of particular project ignoring all other projects or industries in the region. That section 3 of Payment of Bonus Act contemplates separate balance sheet and profit and loss account maintained by the department undertaking etc. unless such undertaking or branch or department was

immediately before commencement of the accounting year treated as part of the establishment for the purpose of computation of bonus. That Malajkhanda project has its independent balance sheet, profit and loss account. It is independent establishment for Payment of Bonus Act 1965. Section 16 of the Payment of Bonus Act provides- bonus is not payable in respect of certain establishments. That Malajkhanda Project is newly established public sector project after the commencement of the Act i.e. on August 1979. Bonus is not payable since 1979. The project has started producing copper concentrates only in the year November 1982 on commercial basis and has not made any profit till this date. Therefore there is no question of payment of bonus. That different establishment of Hindustan Copper Limited has separate balance sheets and rates of bonus differs according to profit made and other conditions. There is no procedure for payment of ex-gratia either in copper industries or in other industry in the region. That principles of industrial adjudication require that the formula of industry cum region should be taken into account for purpose of deciding payment of bonus. Such a practice is not prevailing in Copper industry or any industry in the region. That the Company's financial condition is not good to bear the addnl. Financial burden for payment of bonus. On such grounds, Hindparty denies the claim of the Union.

6. Ist party Union submitted rejoinder supporting its claim for ex-gratia amount. The contentions raised in Written Statement filed by the management are denied. The alleged meaning of ex-gratia payment cannot be attributed by the payments made to workman or public sector undertakings. That the provisions of Section 10(1) of I.D.Act cannot be denied to the employees. That payment of minimum 8.33% is obligatory. The matters of industrial dispute between management and their workmen too much technicalities should not be stressed. Management of Hind party also filed rejoinder at page 5/1 to 5/6. Management has reiterated its contentions that reference is not tenable. The dispute was referred after failure report submitted to the Government. Issue of jurisdiction be decided as preliminary issue. That different establishment of HCL have separate balance sheet and rates of bonus defers according to the copy made according to the condition. Section 16 of Payment of Bonus Act excludes such establishments from payment of bonus. On such contentions, Hind party submits that demand of the Union under reference be rejected.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the demand of the workers of Malajkhanda Copper Project of Hindustan Copper Limited, Post Office Malajkhanda,

Distt. Balaghat (MP) for ex-gratia payment in lieu of bonus is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to ex-gratia amount in lieu of bonus.

REASONS

8. IInd party has contended that reference is not tenable for want of dispute between parties. That Malajkhand Copper Project is independent. That balance sheet and Profit and Loss Account of Malajkhand Project are separately maintained. That under Section 16 certain establishment are exempted from payment of bonus. That there is no procedure prescribed under the Act for payment of ex-gratia amount. That sanction was granted to Malajkhand Copper Project in 1977. The work was started from August 1971. Therefore the demand of Union for ex-gratia amount is not legal. Considering the pleading between parties, certain provisions needs to be considered before dealing with evidence adduced by the parties.

9. Section -3 of Payment of Bonus Act defines –

“Where an establishment consists of different departments or undertakings or has branches whether situated in the same place or in different places all such departments or undertaking or branches shall be treated as part of same establishment for the purpose of computation of bonus under the Act. Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act, unless such department or undertaking or branch was immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.”

Section-10 provides subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 % of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Provided that where an employee has not completed 15 years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation

to such employee as if for the words “one hundred rupees” the words “sixty rupees” were substituted.”

Section 16—special provisions in respect of certain establishments- (1) Where an establishment of this Act, the employees of such establishments shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-sections 1(A), 1(B) & 1(C).

1(A) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders service, as the case may be from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year, but without applying the provisions of Section 15.

1(B) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of Section 15 shall apply subject to the following modifications namely-

(i) For the sixth accounting year-

set on or set off, as the case may be shall be made in the manner illustrated in the fourth schedule taking into account the excess or deficiency, if any, as the case may be, of allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(ii) For the seventh accounting year-

Set on or set off as the case may shall be made in the manner illustrated in the fourth schedule taking into account the excess or deficiency, if any, as the case may be, of allocable surplus set on or set off in respect of the sixth and seventh accounting years;

1(C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be from such establishment, the provisions of Section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I.....

Explanation II.....

Explanation III.....

(2) The provisions of sub-sections (1)(1-A), (1-B) and (1-C) shall so far as may be apply to new departments or undertakings or branches set up by existing establishments.

Provided that if an employer in relation to an existing establishment consisting of different departments or

undertakings or branches (whether or not in the same industry) set up at different periods has before the 29th May, 1965 been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on the basis of the consolidated profits computed in respect of all such departments or in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.”

Section 20 provides if in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector and the income from such sale or services or both is not less than 20 % of the gross income of the establishment in public sector for that year, then the provisions of this Act shall apply in relation to such establish in private sector. Sub-section 2 is provided nothing in this Act shall apply to the employees employed by any establishment in public sector.

Section 22 provides where any dispute arises between any the employee and employer with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial dispute Act 1947 or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or as the case may be such law shall save as otherwise expressly provided apply accordingly.

In view of provisions under Section 22, contentions of IInd party that dispute did not exist between parties and the reference is not tenable cannot be upheld. Section 22 clearly provides that dispute under payment of bonus can be treated as dispute under I.A. Act. IInd party has not challenged order of reference therefore also contentions on above point cannot be accepted. This Tribunal is bound to decide the reference finally.

10. Union examined witness No.1 Bisahu Ram Sahu. The witness of Ist party say that from 28-2-1978, he is working as Heavy earth Moving Equipment Operator. That he produced copy of appointment order Exhibit W-1. That earlier he was working in Chandmari Copper project. The copy of appointment order is produced at Exhibit W-2. That his services are transferable from one project to another of Hindustan Copper Project. He runs Drilling Machine and Dumper Machines. Drilling is done for making a hole for blasting. That all these three operations are mining operations the copper ore is taken from the mine in a dumper to primary crusher plant, from where through conveyer it is taken to the secondary crusher and from there it is taken to Ball Mill Plant where

it is powdered. In his cross-examination, he says only work as a operator on Drill and dumper machines and work either of them when called for. He was not doing supervisory work. The other operations were also not under his control. His evidence that his services are transferable is not challenged in his cross-examination.

11. Witness No.2 Nirmal Kumar Chakraborty in his evidence says that from 15-12-1980, he is working as Account Supervisor in Finance Section of Stores Accounts Section of Malajkhand Copper Project. The accounts of Malajkhand project are audited by the internal account section as well as by the statutory audit officer. i.e. Chartered Accountant appointed by the Govt. but no balance sheet is prepared. After the accounts are audited, they are sent to the Head office at Calcutta for compilation. He final balance sheet of profit and loss is prepared at Calcutta Office. In other words, balance sheet of all the copper projects are prepared in the head office as a single balance sheet. No individual balance sheet of profit and loss is prepared at Calcutta Office. Head of Malajkhand Copper Mine is Executive director who is controlled and take financial instructions and sanctions from Head Office, E.D is empowered regarding contractor and supply upto 30,000 only. For amount above this, sanction from Head Office is required. In his cross-examination this witness says Hirarchi is the Manager Finance, Dy. Manager finance,. Sr. Accounts Officer and then Accounts Officer. That he has no control over account or any other section. Copies of transfer order are not given to him, copies of administrative instructions are also marked to him. That he has no concern with administrative section. He has no power to prepare balance sheet or not. He denies that Manager Finance decided whether the balance sheet should be prepared or not. That he had no basis to make such statement. He was unable to tell the name of any workman transferred from Malajkhand to another project. He admits that he also interested as a workman in his claim of bonus.

12. Witness No.3 Shri P.T. George in his evidence says that he was working as electrician Grade-I in construction. Before that he was at Khetri Mines Copper Complex as Electrician Gr.B from 1977. Both the units are of Hindustan Copper Project. He was transferred from 3-9-82 from Khetri to Malajkhand. On his transfer all facilities and allowance were allowed. He will also be given all service seniority and the quarter on the seniority basis. In his cross-examination, this witness says there was internal circular on basis of which he applied and appeared for interview in Malajkhand Copper Project. He was selected and joined at Malajkhand. He had received appointment order from Malajkhand. He further says mining in Khetri Project started in 1968. He got ex-gratia payment at Khetri from 78-79. Before that no body got ex-gratia payment.

13. Witness No.4 Shri N.K. Sharma says in February 1978, he joined Hindustan Copper Limited at Malajkhand

as H.E.M.E. Operator Grade-I. Before that, I worked for about 11 years with NMDC which treated of its units as one undertaking and paid ex-gratia bonus to all its employees. He did not get ex-gratia payment from 1973 to 1983. In his cross-examination, this witness says that he was not transferred from NMDC to HCL. That CPF was however transferred from NMDC to HCL and they were getting ex-gratia payment in lieu of bonus from 1984. He was told that it was a separate unit therefore we are not entitled to TA and DA and ex-gratia payment. NMDC is a separate company and its registered office is at Hyderabad.. HCL was separated from NMDC in 1968 and now its registered office is at Calcutta. He was getting ex-gratia bonus under the settlement with the NMDC and the Union.

14. Witness No.5 Ram Narain Singh says that he was working in Rakha Copper Project of HCL till 1981. There was an internal circular and officers of Malajkhanda HCL visited the unit and selected him and others. He was given fresh appointment. He joined at Malajkhanda. He was given TA, DA, one weeks joining time but quarter was allotted. In his cross-examination, witness says the team of Malajkhanda had taken their interview and selected. Thereafter he was given appointment order.

15. Evidence of witness Nos. 3 to 4 clearly shows that they did not join Malajkhanda after transfer rather they were selected for the post and appointment order were given.

16. Evidence of witness No.7 Shri Chetanlal is on the point that he was working in Malajkhanda as Electrician. Prior to it, he was working at Bailadila Project as Electrician Grade-II. There was settlement between the management and the Union. Exhibit B to B 4C bears his signature. That Bacheli Project was started in 1971. At the time of settlement Exhibit W-3, Bacheli Project was not started.

17. Witness No.8 Stephen Mandal in his evidence says that from May 1979 he was working as machinist, he was Working President of Bhartiya Khanij Mazdoor Sangh. Prior to 1983, workers were not paid ex-gratia payment. Demands were submitted for the period 1972 to 1983 for branches of Hindustan Copper Project. That he is member of the Joint Consultant Committee of Hindustan Copper Project and know Malajkhanda Copper Project earning more than other units. Only one balance sheet is published for all the units of Hindustan Copper Project. In his cross-examination, this witness says that he has some knowledge of company law and balance sheet, there should be only one balance sheet. He is not working in Account Section though he knows about it. The evidence in cross-examination of this witness shows that mining operator started in 1978. Malajkhanda Copper Project prepared concentrate product since 1982. HCL Project started production in 1967.

18. Management's witness Shri P. Rangarao says that he has brought original balance sheet of Malajkhanda for the year 1978-79 to 1983-84, copies of balance sheets are Exhibit M-1 to M-10. In his cross-examination, witness says that upto October 1978 he was in Hindustan Copper Ltd. Agnigundala Unit. Prior to November 1982, the profit has not been shown in the balance sheets as it was a construction period. The production of Copper concentrates started from November 1982, project has been started in August 1979. Prior to this period, other mining operators might have been carried out which include civil work, prospecting and overburden, removal. There are six units of HCL, concentrates are prepared in all units. Witness was unable to tell about accounts prior to 1979. He has not prepared those balance sheet. Accounts are prepared and sent to the Head Office. The audited balance sheets of various units are sent to the Head office for consolidation. Auditing are done in presence of the Malajkhanda unit. Accounts prior to 1980 were not audited before me. That he has not shown all balance sheet to all units. All reports of units is consolidated. In final report, Profit and Loss of different units is not shown. He do not know whether any ex-gratia is paid to other units. He was unable to tell when other units was established. He was unable to say if separate balance sheets are prepared for different region. That there is separate person for operation of mine. Hospital is under D.G.M (P&A). for the purpose of accounts, they are all in one unit and one account is prepared for all units in Malajkhanda. He could not say if mining operator is started in 1977 in Malajkhanda. There are two Chartered Accountants. They separately prepare the unit balance sheet and then it is consolidated. He has not brought ex-gratia payment papers. Finance and Personnel deals with the ex-gratia matter. He was looking after pay roll and establishments. There are juniors to such accountant, he was not in the group of persons who are compiling the balance sheet. Thus evidence of this witness shows that he is not directly concerned with Accounts, balance sheet preparation, consolidation of accounts of units of HCL.

19. Management's witness No.2 Shri R.K. Das in his evidence says that he was working in Malajkhanda copper project from 1980, first as Deputy Mines Superintendent and then promoted in May 1983 as Mines Superintendent which was redesignated as Senior Manager(Mines). He claims to be conversant in mines. In his cross-examination, this witness says he was in mines prior to 1980. From 1978 the preparation for engaging big machineries was started. Big machines were deployed since August 1979. The preparatory work for making approach benches as well as the operation of removal of over burden was started in August 1979. The removal of over burden by big machines were started in August 1979. Earlier to it the removal of over burden and incidental to it was being done through smaller machines. The removal of over burden is

continuous process and even now it is continuing. Plant was established in the mid of 1982. That late Prime Minister Smt. Indira Gandhi had inaugurated the plant on 12-11-1982. Ist truck load of concentrate processed from Plant operation was dispatched in June 1982. Witness No.3 Narendra Swaroop says in his evidence from 24-3-81, he is working at Malajkhanda Copper Project as Sr. Accounts Officer. He was fully conversant with the accounts of the management throughout. That attested copies M-1 to M-10 are originally audited balance sheet of Malajkhanda Project. Said project started in 1982. This witness in his cross-examination says that Exhibits M-1 to M-10 are not signed by him. These are also not in his handwriting. He did not type it. His educational qualification is B.Sc, Diploma in Works and Cost Accountancy, S.A.S and I.C.W.A. He studied company law. The witness says that he does not know difference between Government Company and a public limited company. He admits that in Govt. company, investment is made by the Government and there are private share holders in Government companies. Hindustan Copper Limited or which Malajkhanda Copper Project is a central Govt. undertaking. He claims ignorance whether he annual report of Hindustan Copper Limited is produced before Parliament or not. He admits that Malajkhanda Copper Project is not registered as a separate company. HCL is a company and it has 6 mines unit. Malajkhanda Copper Project is one of the units. In all these 6 mining units mining and concentrate preparation is done except Chandmari Mines. That Malajkhanda Copper Project has sections like mining, Hospital, Maintains, stores and office, town Administration etc. there is no separate board of directors for Malajkhanda Copper project. Balance sheet are sent to the Head Office. There is only a single board of Directors for Hindustan Copper limited. The copper concentrate started being produced from November 1982. He was unable to tell exact date. He claims ignorance whether the project had completed in March 1982. Management has filed written or typed account statement Exhibits M-1 to M-10. The presumption under Section-3 of Payment of Bonus Act, Account and Profit and Loss account of company cannot be applied to those documents as those documents are not signed even by Chartered Accountant.

20. Affidavit of management's witness Prateek Chandra De is filed. He claims to be working as Chief Manager, Finance. Khetri Copper Complex. He joined on 21-5-97. Prior to it, he was working in Head Office of the company at Calcutta from October 1977 to March 1993 in Malajkhanda Project. In his cross-examination, this witness was unable to tell whether the work of Malajkhanda Project started in 1977. Annual accounts of project were submitted to headquarters. After receiving annual accounts of all units, balance sheet was being prepared. That he never worked in Malajkhanda Project. Before swearing his affidavit, he has not seen old accounts of company. That he had received accounts Exhibit M-3 from establishment

section of the company. That he never worked in NMDC. He claimed ignorance about payment of ex-gratia to the employees of NMDC. That he is a chartered accountant. He was unable to tell whether same wages were paid to the employees in all the units. He denies that the bonus was paid at same rates to employees in all units.

21. From evidence discussed above, it is clear that accounts as well as administration of Malajkhanda Copper Project was controlled from Head Office. Section 3 of Payment of Bonus Act defines –

“Where an establishment consists of different departments or undertakings or has branches whether situated in the same place or in different places all such departments or undertaking or branches shall be treated as part of same establishment for the purpose of computation of bonus under the Act. Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act”

22. The evidence of management's witness that consolidated balance sheet was prepared at head office after receiving balance sheet from all units is not shattered in his cross-examination. Thus Malajkhanda Copper Project appears to be unit of HCL.

Section 16 of Payment of Bonus Act provides special provision exempting payment of bonus for 5 years, 6 years as reproduced in the section. The proviso clearly spells if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has before the 29th May, 1965 been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on the basis of the consolidated profits computed in respect of all such departments or in accordance with the provisions of this Act to the employees of all such departments or undertakings or branches.

23. As per evidence on record, HCL was established in 1961 documents Exhibits M-1 to III produced in record shows instructions given to different unit for payment of ex-gratia amount 8.33 % for the year 1983-84 but no such direction has been given with respect to payment of ex-gratia amount for Malajkhanda Copper Project. The evidence clearly shows that the ex-gratia amount/bonus is paid to the employees at Malajkhanda from 83-84. Minimum bonus of 8.33 % of salary provided under Section -10 of the Act cannot be accepted. The demand is not legal. For above reasons, I record my finding in Negative.

24. In the result, award is passed as under:-

- (1) The demand of the workers of Malajkhanda Copper Project of Hindustan Copper Limited, Post Office Malajkhanda, Distt. Balaghat (MP) for ex-gratia payment in lieu of bonus is not just and proper.
- (2) Relief prayed by Union is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई 2014

का.आ. 1975.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/145/2005-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 1975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/145/2005 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2006

Presiding Officer: SHRI R. B. PATLE

General Secretary,
Prathadith Karamchari
Kalyan Manch,
9, Sanwar Road,
Ujjain.

...Workman/Union

Versus

Regional Manager,
Syndicate Bank,
Shikarvarta Road,
4, Indra Press Complex,
Zone-I, M. P. Nagar,
Bhopal (MP)

...Management

AWARD

(Passed on this 11th day of April, 2014)

1. As per letter dated 18-4-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/145/2005-IR(B-II).The dispute under reference relates to:

“ Whether the claim of Shri O.P.Chouhan that he was engaged during October-90 – 26-5-94 as a Sub Staff by the management of Syndicate Bank and that he had completed 240 days service during a period of 12 calendar months is correct? If so, whether the action of the management. Regional Manager, Syndicate Bank, Ujjain Branch in terminating the services of Shri Om Prakash Chouhan w.e.f. 27-5-94 is justified and what relief the disputant is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/2 to 2/6. Case of workman is that he was continuously working in IInd party from 3-10-90 to 26-5-94. His services were terminated on false allegations. The false report was submitted to the police station, Kotwali, Ujjain alleging that bundle of Rs.50/- note was missing therefore his services were discontinued. Workman submits that he was engaged by Branch Manager Shri P.G.Pai on wages Rs.15 per day against post of permanent peon. He was doing all the work of permanent peon in the Branch. He was performing his duty honestly. Workman was paid bonus. He was transferred from Ujjain to Ratlam against vacant post. He worked more than 240 days as badly peon. That he was transferred to different places. His services were terminated without notice, no retrenchment compensation was paid. The bundle of Rs.50/- note was found in the Bank itself on 26-5-94. The workman was convicted by Criminal Court on 27-9-02 without considering his defence. In appeal, sessions Court acquitted workman observing that workman appears to have falsely trapped by persons having interest. Workman submits that his services were illegally terminated without notice or holding enquiry. He prays for reinstatement with consequential benefits.

3. IInd party filed Written statement at Page 7/1 to 7/6. Preliminary objection is raised by IInd party that Union is not concerned with IInd party management. It has no locus-standi to represent employee in the reference. Ist party workman claims to be working from 1990 to 1994. The dispute is raised highly belated, it is not liable. Workman was never employed by Bank. He rendered services as casual labour. The dispute under Section 2(k) of I.D.Act is not existing. Therefore the reference is not tenable. Workman was engaged purely as casual employee. He was paid daily wages for his working days. That IInd party maintains panel of candidates as per settlement arrived between the recognized Union. That

there are recruitment rules. The procedure was not followed for recruitment of workman. It is also contented that there is no employer employee relationship between parties. The reference is not tenable as the workman was not appointed as regular employee. He had not completed 240 days service preceding his termination. There is no question of compliance of Section 25-F of I.D.Act. Above contentions are reiterated by IInd party praying that claim of workman be rejected.

4. Ist party filed rejoinder at Page 8/1 to 8/3 reiterating its contentions in Statement of claim. That services of workman were terminated without notice. Retrenchment compensation was not paid. Services were terminated on false ground of theft of amount of Rs. 5000.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the claim of Shri O. P. Chouhan that he was engaged during October-90 – 26-5-94 as a Sub Staff by the management of Syndicate Bank and that he had completed 240 days service during a period of 12 calendar months is correct? | In Negative |
| (ii) If so, whether the action of the management. Regional Manager, Syndicate Bank, Ujjain Branch in terminating the services of Shri Om Prakash Chouhan w.e.f. 27-5-94 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to relief prayed by him. |

REASONS

6. Workman claims that he was continuously working with IInd party from 1992 to 26-5-94. IInd party denies those contentions. That workman was not appointed against regular post, he was engaged as casual temporary employee. Workman filed affidavit of his evidence covering most of his contentions pleaded in the Statement of claim about his working from 1990 to May 1994. Workman in his cross-examination Para-8 has stated that in 1990, he worked for 22-25 days, in 1991- for 24 days, in December 1991- for 27 days. He did not recollect whether he worked only for 4 days in December 1991. He has referred documents P-2 to P-22 relating to allegations against him. The evidence of workman that he was continuously working with IInd party is shattered from his evidence in cross-examination. Workman has referred documents P-2 to P-22 in his affidavit

of evidence but he has failed to prove those documents. Zerox copies of documents are produced. Workman says that he was supplied those documents by Branch Manager Mr. Sawant. Though re-examination of workman was allowed, those documents were not proved from evidence in his re-examination. IInd party had denied those documents. Workman has not examined any other employee, no documents are proved about his working. Workman has not discharged burden about his continuous working in the bank. His evidence in Para-8 of cross-examination has shattered his evidence about continuous working.

7. Management has filed affidavit of witness of witness Shri Sunil Goel. In his cross-examination, management's witness says that his evidence of affidavit is based on documents. Those documents are not produced. He was not posted in the branch during relevant period. He did not get information from Branch Manager about payment of retrenchment compensation etc. Management's witness has stated that workman never worked continuously for 240 days during 12 months. Said part of the evidence is not challenged in cross-examination of management's witness. The evidence of workman is not sufficient to establish that workman was continuously working for more than 240 days before termination of his service. Therefore I record my finding in Point No.1 in Negative.

8. Point No.2 workman is challenging termination of his service for violation of Section 25-F of I.D.Act that his services were terminated without notice, retrenchment compensation was not paid. He was terminated on false allegation that bundle of Rs.50/- note is missing from Bank. Copy of judgment is produced by workman. Workman is acquitted in appeal by Sessions Court. In Para 17 of the judgment observations are made. It appears that the accused is falsely implicated for terminating his services. If accused would have committed theft, he would not have concealed notes in the Bank which would not have recovered after 5 days. I have no reason to differentiate that above reasons given by Sessions Court for deciding the appeal. However unless workman proves that he had continuously worked for 240 days prior to termination of his service is not covered as workman under Section 25(B) of I.D.Act. Consequently he is not entitled to protection under Section 25(F) of I.D.Act. management cannot be obliged to issue notice or pay retrenchment compensation for termination of services of workman unless workman has completed 240 days continuous services preceding 12 months of his termination. As per my finding in Point No.1, workman has failed to prove that he was working for 240 days continuous service. Therefore the action of the management terminating services of workman cannot be said illegal. For above reasons, I record my finding on Point No.2 in Affirmative.

9. In the result, award is passed as under:-

- (1) Workman has not proved that he worked for more than 240 days preceding 12 months of his termination.
- (2) Action of the management terminating the services of workman is legal and justified.
- (3) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 जुलाई 2014

का.आ. 1976.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12012/91/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 1976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/91/2012 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 24th June, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 39/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

Between:

Sri D. Gobu : 1st Party/Petitioner

AND

The Zonal Manager : 2nd Party/Respondent
Indian Bank Zonal Office
Lawrence Road
Cuddalore-607002

Appearance:

For the 1st Party/ : Sri J. Thomas Jeyaprabakaran,
Petitioner Authorized Representative

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
Management Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/91/2012-IR(B-II) dated 05.03.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of Indian Bank in imposing the punishment of “Compulsory Retirement with Superannuation Benefits to Sri D. Gobu” is fair and justified? What relief the concerned workman is entitled?”

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 39/2013 and issued notices to both sides. The petitioner has entered appearance through his Authorized Representative and the respondent through its counsel and have filed Claim and Counter Statement respectively. After the Counter Statement was filed, the petitioner has filed rejoinder.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had been working with the Respondent as a Clerk. While he was working at Cuddalore Main Branch as Clerk/Shroff he was issued with a Show Cause Notice alleging that on 13.08.2008 he had received Rs. 2230/- from one Selvaraj for the credit of the loan account of his Son and had given counterfoil to Selvaraj but he had not accounted the amount in the books of the bank nor had he reported any excess cash while closing cash on the day and thus he had committed misappropriation of the amount of Rs. 2230/-. The petitioner had not committed any misappropriation as alleged. An enquiry has been conducted against the petitioner and the petitioner was found guilty of the charges alleged. On this basis of this the punishment of Compulsory Retirement with superannuation benefits was imposed on the petitioner. The punishment is illegal and is without any justification. The Respondent shall be directed to reinstate the petitioner in service with continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

One Selvaraj had taken educational loan from Cuddalore Branch of the Respondent Bank for his Son, Tirugnanasambandam and the monthly remittance was Rs. 2230/-. On 13.08.2008 Selvaraj had come to the branch and tendered Rs. 2300/- which was received by the petitioner under Queue No. 6/4631 and had been given Journal No. 764024. Selvaraj had collected the balance of Rs. 70/- . The petitioner had not posted the amount to the account. Even if the computer had timed out the cash received would be shown in the teller report alongwith the Journal Number, even if it is not credited to the account concerned. The petitioner had not reported any excess cash on the date. On 19.08.2008 when Selvaraj came to the branch to update the loan pass book he found that no credit entry was made for the remittance made on 13.08.2008. He was asked to come on the next day. On 21.08.2008 the petitioner gave cheque for Rs. 2230/- to his account and the amount was credited to the loan account of Tirugnanasambanthan. A Show Cause Notice was issued to the petitioner as to how remittance of the amount was not accounted nor excess cash was reported and the petitioner had given a reply. As the reply was not convincing a Charge Sheet was issued to the petitioner. An enquiry was conducted and the Enquiry Officer had given report holding that the charges leveled against the petitioner are proved. After giving opportunity to the petitioner to give his comments on the enquiry report the punishment of Compulsory Retirement with superannuation benefits was imposed on the petitioner. The case of the petitioner that he is not guilty of the charges and that the punishment imposed on him is illegal and unjustified is without any basis. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the averments in the Counter Statement and also reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and the documents marked as Ext.W1 to Ext.W27 and Ext.M1 to Ext.M8.

7. The points for consideration are:

- (i) Whether the action of the management in imposing the punishment of Compulsory Retirement with superannuation benefits on the petitioner is fair and justified?
- (ii) What is the relief, if any, to which the petitioner is entitled?

The Points

8. The issue relates to the non-accounting of Rs. 2230/- remitted to the educational loan account of one Tirugnanasambanthan. Selvaraj, the father of the loan

account holder had remitted the amount at the Cuddalore Branch of the Respondent Bank wherein the petitioner was working as Shroff, on 13.08.2008. A counterfoil showing receipt of the amount was issued by the petitioner. However, it turned out when Selvaraj the father of the Account Holder who remitted the amount came to the bank on 19.08.2008 that the remittance was not posted in the loan account. On 21.08.2008 the petitioner gave a cheque for the amount of Rs. 2230/- drawn on his account in the bank and this was credited to the loan account. This much facts are not in dispute.

9. Ext.W1 is the Show Cause Notice that was issued to the petitioner on 14.10.2008. Two misconducts are raised against the petitioner by this Show Cause Notice. The first one is that he had received Rs. 2230/- towards loan account and issued counterfoil but failed to enter it in the cash related reports or in VVR and in that case the cash should have been in excess but he had not reported any excess cash. The second limb of the charge is that when the customer came to the bank for updating the loan pass book the amount was found not credited to the loan account and the petitioner had transferred the amount from his account to the loan account on 21.08.2008. In answer to the Show Cause Notice the petitioner has given the reply which is marked as Ext.W2. It is specifically admitted by him that the amount of Rs. 2,230/- remitted was generated as Q.No. 6/4631 and the challan was forwarded to the Officer concerned. He has stated that subsequently cash was closed without any discrepancy on the day in question. He has further stated that only when the concerned party came to the branch and informed about the non-credit of the remittance, vouchers were verified. According to him, the Branch Manager had asked him to adjust the difference in the interest of the branch and had assured him that after verifying the details and the rectification of the discrepancies the amount would be refunded to him. Thus it could be seen that the fact that the amount was received by him was admitted by him in the reply given by him to the Show Cause Notice itself.

10. The Management has examined the Officer who investigated the matter and also the Branch Manager. The copy of the challan, counterfoil and the updated loan pass book were proved through the Branch Manager who was examined as MW1. Other relevant documents pertaining to the transaction also are proved through this witness. The Vigilance Officer who investigated the matter was examined as MW2. The report given by him regarding the investigation has been marked through him. The sum total of the evidence of these two witnesses is what is admitted by the petitioner in his reply to the Show Cause Notice itself. The fact that has been pointed out is that if the petitioner by mistake had omitted to make entry of the remittance in the system, excess cash should have been there at the time of closure of the account on that day. The very case of the petitioner is that he had not noticed any

discrepancy at the time of closure and so there was no occasion for him to notice any failure of remittance to the particular loan account on that day.

11. It has been vehemently argued by the Authorized Representative on behalf of the petitioner that the incident could not be treated as misappropriation of the amount by the petitioner. It has been pointed out by him that the petitioner is a person who is sufficiently experienced and that it is unlikely that he would have deliberately omitted to make the entry regarding remittance of the amount. It has also been pointed out that so far as the petitioner is concerned, Rs. 2,230 was a negligible amount at that time. He referred to the statement of account of the petitioner which would show that a considerable amount was in balance in the account of the petitioner. He also pointed out that the petitioner was a person who had been deputed for adjustment of books and he has been performing this duty in a satisfactory manner. He also stated that there is no case for management that earlier during his service with Respondent there was any complaint against the petitioner.

12. In spite of the above aspects that have been referred to by the Authorized representative the fact remains that the amount was not accounted for by the petitioner. So far as the management is concerned, the petitioner is the one who admittedly received the remittance of Rs. 2230 and issued the counterfoil. In spite of this, the amount has not been credited to the concerned loan account. If it was an omission on the part of the petitioner necessarily there should have been excess cash with the petitioner at the time of the closure of the account which should have been reported then and there.

13. Much attempt has been made by the Authorized Representative to make out that it is probable that the petitioner lost the amount in some other manner. According to him, it is possible that the petitioner, rather than returning Rs. 70 to the customer who had tendered Rs. 2300, must have given back the entire amount. In the absence of any basis for such a case, it is difficult to accept this argument. The petitioner himself has given evidence in the enquiry proceedings. On going through this, it could be seen he himself has not given any explanation for the loss of the amount. If the argument of the Authorized Representative is accepted, the petitioner failed to credit the amount to the loan account and the same amount was missing also. It is unlikely that both this would have occurred in respect of the same transaction. If he lost any amount in some other transaction there would have been some difference in the cash at the time of closure. The petitioner himself has stated during his examination that normally on receiving the challan with cash from the customer he will proceed to verify the details found in the challan and then credit to the account. He will then affix the cash received seal, sign the challan and counterfoil and return the counterfoil to the customer alongwith the

balance if any. So in the normal course all these things are done at a stretch. Still in the present case, the amount was not credited to the loan account.

14. The Authorized Representative has vehemently argued that the complainant in the case should have been examined by the management in which case the truth would have come out. The Authorized Representative has forgotten the fact that the petitioner has admitted that the amount was received by him and the challan was issued by him. Once he receives the amount he is responsible for the amount and is liable to account for the same. So far as the management is concerned the amount was received by the petitioner and yet it was not credited to the concerned loan account. So far as the management is concerned the stand would be that the amount having not been credited to the loan account and excess cash not having been reported the same is appropriated by the petitioner. The burden on the part of the management to prove the case against the petitioner is discharged the moment the above facts are admitted by the petitioner. The management is bound only to prove that the amount is retained by the petitioner. In the normal course, the assumption is that it is appropriated by the petitioner. This appropriation of the amount to be credited to the loan account of the customer becomes misappropriation if it is not otherwise explained. Because of the admission of the petitioner itself the management is not bound to examine the complainant. So the argument on behalf of the petitioner that the failure of the management to examine the customer who remitted the amount and made the complaint is fatal to it could not be accepted. If the petitioner was very much sure that he returned the amount to the customer himself he could have very well examined the customer. Once the management has proved that the petitioner has received the amount, failed to credit it and also failed to report excess cash the burden certainly shifts on the petitioner to prove under what circumstances excess cash was not found with him or under what circumstances there was omission on his part to credit the amount to the loan account. In so far as this is not done the stand of the management that the amount was retained by the petitioner is justified. The second charge is only a corollary to the first charge since the remittance was made by the petitioner subsequently to the loan account.

15. The punishment imposed on the petitioner is Compulsory Retirement from service with superannuation benefits. As has been pointed out by the Counsel for the Respondent it is a case where there was loss of confidence for the management in the workman in which case a reinstatement becomes impossible. So a lesser punishment than what is imposed by the Disciplinary Authority could not be thought of. In these circumstances I am not inclined to interfere with the finding of the Enquiry Officer or in the punishment imposed by the Disciplinary Authority.

16. Accordingly the reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 24th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri D. Gobu

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	14.10.2008	Show Cause Notice issued by CO/Cuddalore
Ex.W2	28.10.2008	Reply to the Show Cause Notice
Ex.W3	31.12.2008	Charge Sheet issued by CO/Cuddalore
Ex.W4	18.12.2009 08.05.2009 18.05.2009	Proceedings of the departmental enquiry conducted against Sri Gobu
Ex.W5	22.08.2008	Letter from Cuddalore Main to Asstt. General Manager, Cuddalore
Ex.W6	08.09.2008	Copy of printout of the IP message sent by CO/Cuddalore to CDC, Chennai
Ex.W7	09.09.2008	Copy of the IP Message sent by CO/Cuddalore to AGM Project Office, Chennai
Ex.W8	13.08.2008	Copy of the pay in slip for the a/c of Sri S. Thirugnanasambanthan for Rs. 2,230 counterfoil, loan pass book
Ex.W9	05.09.2008	Copy of the interrogation statement obtained from Shri S. Selvaraj
Ex.W10	06.09.2008	Copy of the interrogated statement obtained from Sri D. Gobu
Ex.W11	12.09.2008	Copy of the letter and interrogated statement from Sri M. Jagannathan, Assistant Manager, Cuddalore Main Branch
Ex.W12	12.09.2008	Investigation report of Sri C. Nala Neela Jeevathan, Vigilance Officer, CO/Cuddalore

Ex.W13	25.09.2008	Copy of statement from N. Govindaraju, Senior Manager, Cuddalore Main
Ex.W14	-	Copy of statement of loan accounts
Ex.W15	-	Copy of the statement of SB account of Mr. D. Gobu for the period from 01.01.2008 to 31.12.2008
Ex.W16	01.06.2009	Copy of the Presenting Officer's brief on the departmental enquiry
Ex.W17	08.06.2009	Copy of the defence summing up in the departmental enquiry
Ex.W18	06.07.2009	Copy of the Enquiry Officer's findings in the departmental enquiry
Ex.W19	16.07.2009	Copy of the employees' comments on Enquiry Officer's findings
Ex.W20	14.11.2009	Copy of the second show cause notice issued to the Employee
Ex.W21	30.11.2009	Reply to the Second Show Cause Notice
Ex.W22	12.12.2009	Copy of the speaking orders of the Disciplinary Authority
Ex.W23	22.01.2010	Copy of the appeal preferred against the punishment imposed
Ex.W24	18.04.2011	Copy of the orders of the Appellate Authority
Ex.W25	20.07.2011	Petition under Section-2(a) of ID Act to ALC (C), Chennai
Ex.W26	01.03.2012	Counter reply by Indian Bank Management to the petition under Section-2(a)
Ex.W27	24.03.2012	Rejoinder to the counter reply

On the Management's side

Ex.No.	Date	Description
Ex.M1	13.08.2008	Loan Account Pay-in-Slip
Ex.M2	31.12.2008	Memo from Vigilance Cell C.O., Cuddalore to the petitioner – Ref. Framing Charges – Appointing Enquiry Officer
Ex.M3	13.08.2008	Voucher Verification Report – Page 27, 28 – Loan Accounts – A/c No. 2440505076
Ex.M4	04.12.2009	Proceedings of personal hearing before DA
Ex.M5	-	Conciliation Failure Report
Ex.M6	25.04.2011	Gratuity Receipt of the Petitioner

- Ex.M7 19.04.2012 Receipt for receiving arrears of Gratuity on account of revision in salary effective 01.11.2007
- Ex.M8 25.04.2011 Receipt for having received PF by Petitioner – E.C. +B.C. + Interest.

नई दिल्ली, 7 जुलाई, 2014

का.आ. 1977.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन पोर्ट एसोसिएशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 58/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-31011/21/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 1977.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Port Association, and their workmen, received by the Central Government on 04/07/2014.

[No. L-31011/21/2007 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 25th June, 2014

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 58/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Port Association and their workman)

Between:

1. The General Secretary, : 1st Party/1st Petitioner
Port & Dock Labour
Union No. 1/675,
1st Street, Muthamizh Nagar,
Chennai-600118

2. The Vice President, : 1st Party/2nd Petitioner
Bharatiya Port and Shipyard
Mazdoor Mahasangh (BMS)
No. 1/675, 1st Street,
Muthamizh Nagar,
Chennai-600118.

AND

The Managing Director : 2nd Party/Respondent
Indian Ports Association
1st Floor, South Tower
NBCC Place, Bhisham
Pitamah Marg, Lodi Road,
New Delhi-110003

Appearance:

For the 1st & 2nd Party/ : M/s. Samanta & Ston, Advocate
Petitioners

For the 2nd Party/ : Mr. M.R. Dharanichander,
Management Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-31011/21/2007-IR(B-II) dated 14.05.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Indian Port Association over the matter of strike notice served by unions affiliated to 5 Federations at major posts proposing strike on or after 1st September, 2007 to press there seven point charter of demands are legal & justified? What relief these workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 58/2013 and issued notices to both sides. Both sides have entered appearance through the counsel and filed their Claim and Counter Statement respectively.

3. The case in the Claim Statement filed by the petitioner in brief are these:

The First Petitioner is a Registered Trade Union and is also recognized by the Management of Chennai Port Trust. The Union has more than 276 workers on roll as on date. The Union had been espousing the cause of members for more than 40 years. The Union was declared as recognized by the Management. The Second Petitioner is a federation with 9 Unions affiliated to it. The petitioners have issued Strike Notice on 14.08.2007 and 16.08.2007 respectively alongwith other five federations. The five federations had discussion with the Management before the Central Labour Commissioner and have arrived at an agreement and implemented the agreement without

consulting the petitioners. The petitioners have filed Writ Petitions before the High Court of Madras and the High Court had directed Union of India to pass appropriate orders on the failure report sent by the Labour Commissioner. The Union of India had replied that the disputes raised are not maintainable. So the petitioners have filed another Writ Petition and this was allowed and the Union of India had referred the dispute to this Tribunal for adjudication. Issue Nos. 3 and 5 in the Strike Notices given by the petitioners are already settled. The petitioners had demanded to provide representation to the Second Petitioner in Bipartite Wage Negotiation Committee (BWNC). The Management has stated that decision has been taken by it to include only those Union having following of 8.33% workmen in the Committee. The Second Petitioner federation has nine affiliated unions in 11 major ports. The First Petitioner Union at Chennai is declared as recognized. So the action of the management in not providing representation to the Second Petitioner is not justified. In the Strike Notice the petitioners have demanded merger of 50% Dearness Allowance with Basic Pay w.e.f. 01.01.2005 which is the day on which DA crossed 50% of the salary. But the Management had merged 50% DA w.e.f. 01.01.2007 only. The petitioners have also raised the issue of filling up of vacancies in the Strike Notice. All the posts which are shown as vacant by the Respondent in their statement furnished under Right to Information Act should be filled with retrospective effect. A direction may be given to the Respondent to include the Second Petitioner in the BWNC, to implement the merger of 50% DA with Basic Pay w.e.f. 01.01.2005 and to fill up all the vacancies as per the statement furnished by the Respondent with retrospective effect.

4. The Respondent has filed Counter Statement contending as follows:

All the averments in the Claim Statement except those that are specifically admitted are denied by the Respondent. The claim is liable to be dismissed in view of lack of representative capacity of the petitioners in BWNC. Nearly 59,000 employees are working throughout the Indian Ports. The petitioner unions have strength of 1,418 members only out of these. In the Claim Statement the petitioners have stated that First Petitioner has membership of 278 employees only. So the Petitioners have no locus standi to claim inclusion in BWNC at national level. After the dispute was raised by the petitioners in 2007, two wage settlements were signed by the Ports Management with 5 major labour federations, one on 19.01.2010 covering the period from 01.01.2007 to 31.12.2011 and the other on 25.10.2013 covering the period from 01.01.2012 to 31.12.2016. The benefits of wage revision has been enjoyed by all the Port and Dock Workers. So the claim of the petitioners have become infructuous. The settlement signed by the 5 major labour federations is binding on all the workers including members of the minority unions also.

The dispute is bad for non-joinder of necessary parties also since the Shipping Industry and the local port are not made parties to the dispute. The membership strength of each federation is determined by adding the membership strength of all the Unions affiliated to that federation. On the basis of such membership strength, the number of representatives of each federation on BWNC is decided. Accordingly, 5 major labour Federations were included in the BWNC. The percentage strength of the Second Petitioner Federation is 2.67% only. The Second Petitioner does not have the required membership strength to entitle it to have representation in BWNC. The major labour federations also have served strike notice alongwith the petitioners in the year 2007. The major federations have agreed to withdraw the strike notice in the conciliations proceedings held with the Labour Commissioner. In Public Sector Undertakings, where Industrial DA Pattern is followed, 50% DA merger had taken place from 01.01.2007. The same benefit has been extended to the Port workers and this has been accepted by the five major labour federations. The benefits are being enjoyed by the members of the petitioners also. Filling up of promotion vacancies is done by the concerned Port Trusts. For direct recruitments Ports are bound to follow the restrictions imposed by the Government of India. If there are any unfilled vacancies in a particular port the petitioners are at liberty to hold local level discussions to resolve the issue. The petitioners are not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and the documents marked as Ext.W1 to Ext.W10 and Ext.M1 to Ext.M8.

6. The points for consideration are:

- (i) Whether the Second Petitioner is entitled to representation in the Bipartite Wage Negotiation Committee (BWNC)?
- (ii) Whether the Port and Dock Workers are entitled to merger of 50% DA with Basic Pay w.e.f. 01.01.2005?
- (iii) Whether the Respondent is bound to fill up the vacancies as claimed by the petitioners?

The Points

7. The claim of the petitioners in the Claim Statement is that the Second Petitioner should be included in the BWNC, that the merger of 50% DA with Basic Pay shall be implemented w.e.f. 01.01.2005 and that all the vacancies as per the statement furnished by the Respondent should be filled up. The First Petitioner is a Union and the Second Petitioner is a Federation with some unions affiliated to it. The reliefs are claimed by the petitioners on the basis that earlier, in 2007, they have given strike notice making the demands now raised in the dispute as well as other demands.

8. The Respondent has raised a Preliminary objection that the petitioners have no locus-standi to raise the dispute. It is stated in the Counter Statement that there are about 59000 employees working in different ports all over India and that the strength of the petitioners is 1418 only.

9. What is stated in the Claim Statement is that the First Petitioner Union has got 276 workers as members and the Second Petitioner has 9 Unions affiliated it at the time when the dispute was raised. The stand of the Respondent is that the strength of the petitioners is not sufficient to enable them to represent the entire workers of the Ports.

10. As early as in 1961 the Madras High Court has considered under what circumstances a dispute can be raised. The Court has held in the decision 'WORKING JOURNALISTS OF THE HINDU VS. THE HINDU AND ANOTHER' reported in 1961 (1) LLJ 288 that a dispute in order to become an Industrial Dispute should have the support of a substantial section of the workmen concerned in the establishment. What a substantial section of workmen may mean will depend upon the particular facts of each case, it has been observed. The question has been considered by the Apex Court in the decision in WORKMEN OF INDIAN EXPRESS NEWSPAPER (PVT) LTD VS. THE MANAGEMENT OF INDIAN EXPRESS (PVT) LTD reported in 1970 2 LLJ 132. In the above case the journalists working in the newspaper in question had not formed a Trade Union of their own. Two journalists have raised the dispute and the dispute was espoused by a Union of working journalists in which 25% of the journalists of the establishment were members. The Apex Court has held that the Union has a necessary representative capacity to espouse the cause of the concerned employees.

11. It is the case of the Respondent that about 60,000 workers are working in the Ports all over India. The relief claimed by the petitioners is in respect of the entire workers of all the Ports in India. The General Secretary of the First Petitioner Union who has given evidence as WW1 has admitted during his cross-examination there may be about 60,000 workers in all major ports throughout India. According to the Respondent, the membership of the petitioners in the ports all over India is below 1500 only. In spite of this contention, the petitioners have not produced any documents to show what exactly is the membership or how much support they are having among the workers.

12. It has been pointed out by the Respondent in the Counter Statement that the percentage strength of the Second Petitioner as in the year 2006 based on secret ballot is only 2.67%. The Respondent has also given the percentage strength of other federations all of which are having more strength than that of the Second Petitioner. In Ext.M7 the Counter Statement filed by the Respondent in the High Court in answer to the Writ Petition filed by

the petitioners details of the percentage of different federations including that of the Second Petitioner are given. In spite of this the petitioners did not think it necessary to produce documents showing the actual representative capacity of the petitioners.

13. If petitioners' are having membership of 1418 only as stated in the Counter Statement, this is a negligible number when the huge number of works in the Ports all over India are taken into account. If this fact is considered in the light of the dictum laid down in the decisions referred to earlier it is more than clear that the petitioners have no capacity to represent the entire workers of the Ports all over India. So the petitioners have no locus-standi to raise dispute also. For this very reason the claim of the petitioners is liable to be rejected.

14. To come to the merits of the case, the first demand of the petitioners is that the Second Petitioner they should be included in the BWNC. Their stand is that the Second Petitioner has 9 affiliated unions and for this reason it should have been included in the negotiation committee. It is reasoned by them in the Claim Statement that some federations which have just one or two affiliated unions are provided representation in the negotiation committee while the Second Petitioner was not given representation even if it is having 9 affiliated unions.

15. The justification given on behalf of the petitioners to include them in the negotiation committee is without any foundation. Even as per the dictum laid down by the Apex Court the capacity for representation emanates from the number of members the union or a federation as the case may be and is not dependent on the number of unions affiliated. More number of members for a union means it gets more bargaining capacity. The representative capacity of a Federation is determined based on the number of memberships of all unions affiliated to a Federation only. If the number of members are very small the Union or the Federation will not have the representative capacity. The membership strength of the Second Petitioner is 2.67% only.

16. Apart from the above is the fact that the claim of the petitioners to include in the BWNC is not an Industrial Dispute at all. The counsel for the Respondent has referred to 3rd schedule of the ID Act wherein matters within the jurisdiction of Industrial Tribunals are given. These do not include the right of a Union or a federation or a group of workers for recognition or to be considered for inclusion in the committee for negotiation regarding the demands raised. For this reason also the claim of the petitioners to be included in the BWNC is to be rejected.

17. Another demand made by the petitioners is to implement the merger of 50% DA with Basic Pay w.e.f. 01.01.2005 instead of w.e.f. 01.01.2007. Even assuming that the petitioners have got the representative capacity and

are competent to raise the dispute, the petitioners are not entitled to any relief in this respect also. According to the petitioners the merger of 50% DA is to be brought into effect w.e.f. 01.01.2005, the day on which the DA crossed 50%. Rather than conceding to this demand the Management is said to have agreed for merger w.e.f. 01.01.2007 only.

18. According to the Respondent, the Port Workers have no right to claim merger of DA as allowed to the Central Government Employees as Ports are not following Central DA pattern. Just like Public Sector Undertaking, Industrial DA pattern is followed so the merger has taken place from 01.01.2007 and this benefit had been extended to the Port Workers also. Though the petitioners have stated in the Claim Statement that other Public Sector Undertakings were given the benefit w.e.f. 01.01.2005 no documents are produced to this effect.

19. It has also been argued by the Counsel for the Respondent that in any case the issue has become infructuous. According to the Counsel after 2007 during which the dispute was raised two wage settlements were entered into between the Respondent and the Workers. Though documents to the effect are not produced by the Respondent it has been admitted by WW1 that two settlements have come into effect subsequently. He has admitted that on 19.01.2010 a settlement was arrived at based on the strike notice given on 14.08.2007 and 16.08.2007. These are the two strike notices referred to in the Claim Statement. WW1 has admitted that the settlement effected was for the period from 01.01.2007 to 31.12.2011. On 25.10.2013 another settlement was arrived at for the period from 01.01.2012 to 31.12.2016. WW1 has also admitted that both these settlement are under Section-12(b) of the ID Act.

20. The counsel for the Respondent has referred to the decision of the Apex Court in NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS reported in AIR 2000 SC 469 where it was held that a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to minority union which has objected to the same. It has been further held that if every Trade Union having few members is to go on raising dispute and the government is making reference again and again the very purpose of the settlement is defeated. Apparently, all the workers including the members of the petitioners have been enjoying benefits as per the two settlements. The settlements are binding on all the workers of the Ports. So the issue in any case has become infructuous.

21. The last demand of the petitioners is that all the vacancies as per the statement furnished by the Respondent under the Right to Information Act shall be

filled up. Though there is reference to such a statement in the Claim Statement, the statement is not seen produced by the petitioners. There is no evidence as to how many vacancies are there. There is no evidence as to under what circumstances the vacancies have occurred.

22. Apart from the above is the fact that the Respondent is not the authority to fill up the vacancies. WW1 himself has admitted during his cross-examination that the vacancies are to be filled up by the respective Port Trusts. In the Counter Statement itself the Respondent has stated that the petitioners are to enter into negotiation with the respective Port Trusts regarding the issue of filling up of the vacancies. It is apparent that the Respondent is not the authority to fill up the vacancies. So the petitioners, even assuming that they have got the locus standing to raise the dispute, is not entitled to any relief regarding the claim of filling up of vacancies also.

23. In view of my discussion above, I find the petitioners are not entitled to any relief. The reference is answered against the petitioners.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri R. Santhanam
1st & 2nd Petitioners

For the 2nd Party/ : None
Management

Documents marked

On the side of the Petitioner

Ex.No.	Date	Description
Ex.W1	05.06.2003	Letter from Mumbai Port Trust to the Second Petitioner
Ex.W2	14.06.2006	Letter from Mumbai Port Trust to the 2 nd Petitioner
Ex.W3	10.08.2010	Memorandum of Undertaking between Cochin Port Trust and the Recognized Trade Union
Ex.W4	21.03.2011	Letter from New Mangalore Port Trust to the Second Petitioner
Ex.W5	31.01.2012	Letter from New Mangalore Port Trust to Second Petitioner to attend the meeting
Ex.W6	24.02.2012	Recognition of First Petitioner Union

Ex.W7	06.10.2012	Letter to the First Respondent to attend the joint discussion about wage settlement
ex.W8	12.09.2012	Letter from the Government of India, Ministry of Shipping to the Respondent
Ex.W9	14.06.2013	Bilateral meeting regarding various demand in Cochin Port Trust
Ex.W10	27.06.2013	Letter from the Mumbai Port Trust regarding loss of demurrage to the Mumbai Port Trust

New Delhi, the 7th July, 2014

S.O. 1978.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Mumbai as shown in the Annexure, in the industrial dispute between the management of Casby Logistics Pvt. Ltd., and their workmen, received by the Central Government on 04/07/2014.

[No. L-31011/09/2013 - IR (B-II)]

RAVI KUMAR, Section Officer

On the side of the Respondent:

Ex.No.	Date	Description
Ex.M1	04.07.2003	Letter from the Secretary, Ministry of Shipping and Transport, New Delhi to the Second Petitioner
Ex.M2	14.08.2007	Strike Notice given by the 2 nd Petitioner to the Chief Labour Commissioner (Central)
Ex.M3	16.08.2007	Strike Notice given by the First Opposite Part / Petitioner to the Chairman, Chennai Port Trust and the Chief Labour Commissioner (Central)
Ex.M4	21.09.2007	Conciliation proceedings held before the Chief Labour Commissioner (Central), New Delhi
Ex.M5	02.01.2008	Order passed by the Second Opposite / Respondent
Ex.M6	28.01.2008	Writ Petition No. 3870 of 2008 filed by the First Party Union
Ex.M7	June 2008	Counter Statement in WP No. 3870 of 2008 filed by the Second Party/ Respondent
Ex.M8	20.02.2013	WP No. 3870 of 2008 Order Copy

नई दिल्ली, 7 जुलाई 2014

का.आ. 1978.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कसबी लोजिस्टिक्स प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 04/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-31011/09/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI**

Present:

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO. CGIT-1/4 OF 2014

Parties: Employers in relation to the management of

Casby Logistics Pvt. Ltd.

And

Their workmen

Appearances:

For the first party no.1 and 2/ : Absent.
Management

For the second party / Union : Absent

State : Maharashtra

Mumbai, dated the 13th day of June, 2014

AWARD

1. The present reference has been made by the Central Government by its order dated 16.12.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

“Whether the demand of the Transport and Dock Workers Union for revision of wages and improvement in other service conditions of the workers employed by M/s.Casby Logistics Pvt. Ltd. in the establishment of M/s Gateway Terminals India Private Ltd., at Jawaharlal Nehru Port Trust as per the Charter of Demands dated 16.4.2012 are legal and just? What relief the workmen concerning the Charter of Demands are entitled to?”

2. By the order dated 8.1.2014, notices were directed to be issued to the parties. Accordingly, notices were issued to the parties by Registered Post AD.

3. Notices issued to the first party / Management Nos. 1 and 2 as well as the second party / Union were duly served on the respective parties. Acknowledgement cards were received back. However, when the matter was taken up on 28.2.2014, which was the date fixed in the notice, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party / Union despite service of notice.

4. In the circumstance, by the order dated 28.2.2014, the case was adjourned to 15.4.2014, for filing Statement of Claim on behalf of the second party / Union.

5. On 15.4.2014, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party / Union. In the circumstance, by the order dated 15.4.2014, the case was adjourned to 3.6.2014 for filing Statement of Claim on behalf of the second party / Union.

6. Pursuant to the order dated 15.4.2014, the case was put up on 3.6.2014. Again, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party / Union. In the circumstance, by the order dated 3.6.2014, the case was adjourned to 13.6.2014 i.e. today for filing Statement of Claim on behalf of the second party / Union.

7. The case is taken up today. None is present on behalf of the first party / Management Nos.1 and 2 nor is anyone present on behalf of the second party / Union.

8. No Statement of Claim has been filed on behalf of the second party / Union.

9. From the above narration of facts, it is evident that despite service of notice and despite repeated dates having been fixed, none has appeared on behalf of the second party/Union. No Statement of Claim has been filed on behalf of the second party / Union. There is thus, no pleading or evidence filed on behalf of the second party / Union in support of its claim as contained in the Reference made to this Tribunal.No relief, therefore, can be granted to the second party / Union.

10. Reference is consequently answered by stating that no relief can be granted to the second party / Union.

11. Award is passed accordingly.

JUSTICE S.P.MEHROTRA, Presiding Officer

नई दिल्ली, 7 जुलाई 2014

का.आ. 1979.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नम्रता ट्रांसपोर्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 05/2014)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-31011/10/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 1979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Mumbai as shown in the Annexure, in the industrial dispute between the management of Namrata Transport, and their workmen, received by the Central Government on 04/07/2014.

[No. L-31011/10/2013 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present:

JUSTICE S. P. MEHROTRA, Presiding Officer

REFERENCE NO. CGIT-1/5 OF 2014

Parties: Employers in relation to the management of Namrata Transport

And

Their workmen

Appearances:

For the first party no.1 and 2/ Management : Absent.

For the second party / Union : Absent

State : Maharashtra

Mumbai, dated the 13th day of June, 2014

AWARD

1. The present reference has been made by the Central Government by its order dated 16.12.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

“Whether the demand of the Transport and Dock Workers Union for revision of wages and improvement in other service conditions of the workers employed by M/s. Namrata Transport in the establishment of M/s. Gateway Terminals India

Private Ltd., at Jawaharlal Nehru Port Trust as per the Charter of Demands dated 16.4.2012 are legal and just? What relief the workmen concerning the Charter of Demands are entitled to?"

2. By the order dated 8.1.2014, notices were directed to be issued to the parties. Accordingly, notices were issued to the parties by Registered Post AD.

3. Notices issued to the first party / Management Nos. 1 and 2 as well as the second party / Union were duly served on the respective parties. Acknowledgement cards were received back. However, when the matter was taken up on 28.2.2014, which was the date fixed in the notice, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party/Union despite service of notice.

4. In the circumstance, by the order dated 28.2.2014, the case was adjourned to 15.4.2014, for filing Statement of Claim on behalf of the second party / Union.

5. On 15.4.2014, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party / Union. In the circumstance, by the order dated 15.4.2014, the case was adjourned to 3.6.2014 for filing Statement of Claim on behalf of the second party / Union.

6. Pursuant to the order dated 15.4.2014, the case was put up on 3.6.2014. Again, none was present on behalf of the first party / Management Nos.1 and 2 nor was anyone present on behalf of the second party / Union. In the circumstance, by the order dated 3.6.2014, the case was adjourned to 13.6.2014 i.e. today for filing Statement of Claim on behalf of the second party / Union.

7. The case is taken up today. None is present on behalf of the first party / Management Nos.1 and 2 nor is anyone present on behalf of the second party / Union.

8. No Statement of Claim has been filed on behalf of the second party / Union.

9. From the above narration of facts, it is evident that despite service of notice and despite repeated dates having been fixed, none has appeared on behalf of the second party/Union. No Statement of Claim has been filed on behalf of the second party / Union. There is thus, no pleading or evidence filed on behalf of the second party / Union in support of its claim as contained in the Reference made to this Tribunal.No relief, therefore, can be granted to the second party / Union.

10. Reference is consequently answered by stating that no relief can be granted to the second party / Union.

11. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2014

का.आ. 1980.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 1 की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 43/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था ।

[सं. एल. 12011/49/2009 आई आर (बी. II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 1980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/49/2009- IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan",

G G Palya, Tumkur Road,

Yeswanthpur, Bangalore – 560 022.

Dated : 2nd May, 2014

Present :

Shri S. N. NAVALGUND, Presiding Officer

C R No. 43/2009

I Party

The Joint Secretary,
Bank of Maharashtra Employees
Union (AIBEA), C/o Bank of
Maharashtra, No. 343, 3rd Main,
SFS 407, 4th Phase, Yelahanka
New Town, BANGALORE.

II Party

The General Manager,
Bank of Maharashtra,
15, Police Station
Road, Basavangudi,
BANGALORE.

Appearances:

I Party : None

II Party : Shri Ramesh Upadhyaya, Advocate

AWARD

1. The Central Government vide order No. L-12011/49/2009-IR(B-II) dated 12.08.2009 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section

(2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the management of Bank of Maharashtra, Regional Office, Basavangudi, Bangalore were just and proper in awarding punishment of ‘CENSURE’ in respect of misconduct under Clause 19.7(d) and Clause No. 19.7(j) of the Bi-partite Settlement and also simultaneously ordering the recovery of Rs. 62,500/- from the salary of Shri Shashidhar Rao Moolki, Computer Operator, is just and proper? To what relief is the delinquent workman entitled to?”

2. Though the I party failed to comply the direction of the referring authority to file statement of claim within 15 days from the date of receipt of order of reference while registering it in C R 43/2009 notices were issued to both sides, I Party failed to enter appearance and file claim statement. Since the I Party failed to enter appearance and file claim statement the II party was called upon to file statement substantiating the impugned action and as number of opportunities provided were not availed to file such statement by order dated 04.04.2012 the reference was allowed. Subsequently, the II party when filed application in Miscellaneous No. 01/2012 to recall the Award the notices of the same were served on the I Party and as the I party failed to enter appearance after receiving the Evidence of II Party the said application came to be allowed by Order dated 06.08.2013 and re-registering the reference in the same number the notice was issued to the I Party but the I Party failed to enter appearance and file claim statement. Then the II Party when called upon to lead the evidence substantiating the impugned action against the I Party workman, the learned advocate appearing for the II Party while filing the affidavit of Senior Manager (Staff), Mrs. Sirisha Katta, examining him on oath as MW 1 got exhibited Ex M-1 to Ex M-14 and closed his side.

3. Heard the arguments and perused Ex M-1 to Ex M-14.

4. On appreciation of counter statement with the evidence adduced for the II party, I arrive at conclusion of Rejecting the Reference for the following

REASONS

5. It is borne out from the records that the Assistant General Manager, Bangalore Region as Disciplinary Authority to Sh. Shashidhar Rao Computer Operator, Bank of Maharashtra, Chamarajpet Branch, Bangalore issued him charge sheet dated 02.02.2006 which reads as under :

CHARGESHEET

It has been alleged against you that you have committed the following commissions and omissions, while working as Clerk at Malleswaram Branch, Bangalore

with respect to operation of Current Account of M/s. Hercules Sports Pvt. Ltd.

M/s. Hercules Sports Pvt. Ltd., who had Current Account No. 1218 with out Malleswaram Branch, Bangalore issued a Cheque No. 110084 dated 30.05.1998 for Rs. 1,25,000.00 in favour of M/s. People Education Trust, Mandya.

On 28.05.1998, M/s. Hercules Sports Pvt. Ltd. has given instructions to stop the payment of that Cheque. These instructions were received and noted by you on the concerned folio the current ledger on 28.05.1998.

On 02.06.1998, upon presentation of the said Cheque, you have debited it to the Current Account No. 1218 of M/s. Hercules Sports Pvt. Ltd., even though stop payment instructions were already received and recorded on ledger folio concerned.

The Account holder M/s. Hercules Sports Pvt. Ltd. had approached appropriate legal forum, as debiting his account towards the payment of said Cheque in contravention of Stop Payment instruction given by them, thereby parting with his funds to M/s. Peoples Education Trust, illegally and thus depriving the company of their funds. The drawer Company has demanded making good the amount with interest and costs.

Therefore bank charges you:-

1. that your action of posting the Cheque No. 110084 dated 30.05.1998 after receipt of the stop payment instructions is an act of not adhering to the procedures for running the current deposit is an act of breach of rule of business of the bank or instructions for running current department, is an act of Minor misconduct under clause No. 19.7(d) of Bi-partite Settlement.

2. that your action of posting the Cheque No. 110084 dated 30.05.1998 even after receiving the stop payment instructions, is an act of negligence involving bank to serious loss, is an act of gross negligence which is an act of gross misconduct under cl. 19.5(j) of Bi-partite Settlement.

Hence, it is decided to conduct Department Enquiry against you. Shri S. SAMPATH, Senior Manager, Currency Chest Bangalore, who is appointed as Enquiry Officer who will advise you about the date, time and place of the enquiry, would conduct the enquiry.

You will be permitted to be defended by a representative of a registered trade union of bank employees of which you are a member on the date first notified for the commencement of the enquiry; and if you are not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of the employees of the bank in which you are employed.

OR

At the request of the said union by a representative of the State Federation or All India Organisation to which such union is affiliated. You will be permitted to produce your evidence, to examine witnesses in your defence and to cross-examine the witnesses brought by the Bank against you at the enquiry.

Please note that the enquiry may be proceeded with in your absence if you do not appear at the appointed date, time and place of enquiry.

Necessary documents in support of charge sheet are enclosed, as detailed in the Annexure. Bank reserves its right to add any documents. List of the witnesses will be made known in the course of enquiry.

Disciplinary Authority &
Asst. General Manager
Bangalore Region

6. Then he appointed Sh. S Sampath, Enquiry Officer & Senior Manager, as Enquiry Officer by order dated 02.02.2006. Then the Enquiry Officer causing notice to the CSE observing the formalities of preliminary hearing and recording the evidence of Sh. A S Nayak, Branch Manager, Salem Branch for the management and exhibiting 11 documents as M-1 to M-11 and Ex D-1 to D-4 to the CSE and after receipt of written brief from the Presenting Officer and the Defence Representative submitted his report dated 30.09.2006 holding the charge as proved. Then the Disciplinary Authority sending the copy of the enquiry report and receiving his written submission and affording an opportunity of personal hearing passed the impugned Order of "CENSURE" dated 14.03.2007 and then giving an opportunity of hearing to the CSE passed another dated 26.03.2007 to recover Rs. 62500.00 from him the pecuniary loss sustained by the Bank due to his act.

7. Since the I Party did not care to enter appearance and file claim statement disputing the validity of Domestic Enquiry or the validity of the enquiry finding and the punishment imposed, I have no other go except to say that the II party is justified in imposing the punishment of Censure for the misconduct proved against the I Party workman and also in passing the order of recovery of Rs. 62500.00 the loss caused to it by his act. Therefore, the reference fails and the following order follows.

ORDER

The reference is rejected holding that the management of BOM is justified in its action of awarding punishment of censure in respect of misconduct under Clause 19.7(d) and Clause No. 19.7(j) of the Bipartite Settlement and also simultaneously ordering the recovery of Rs. 62500.00 from salary of Shri Shashidhar Rao Moolki, Computer Operator.

(Dictated to U D C, transcribed by him, corrected and signed by me on 2nd MAY, 2014)

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

Witnesses examined:

MW 1 — Smt. Sirisha Katta, Senior Manager (Staff)
WW 1 — Nil

Documents exhibited on behalf of management:

Ex M-1 : Office copy of the charge sheet dated 02.02.2006 issued to Shri S. U. Moolky.
Ex M-2 : Original order of the Disciplinary Authority dated 02.02.2006 appointing Enquiry Officer
Ex M-3 : Original Enquiry Proceedings
Ex M-4 : Original Documents exhibited and marked management Exhibits (M-1 to M-11)
Ex M-5 : Original Documents exhibited and marked Defence Exhibits (D-1 to D-4) marked in the enquiry
Ex M-6 : Original Arguments dated 25.07.2006 of Presenting Officer.
Ex M-7 : Original Arguments dated 25.07.2006 of Defence Representative.
Ex M-8 : Original Findings of the Enquiry Officer dated 30.09.2006.
Ex M-9 : Office copy of the covering letter dated 18.12.2006 of the Disciplinary Authority addressed to the 1 Party along with copy of substituted findings.
Ex M-10 : Original written submission of the 1 Party dated 18.01.2007 on the findings of the Enquiry Officer findings by the Defence Representative.
Ex M-11 : Office copy of the notice of personal hearing to the employee dated 15.02.2007.
Ex M-12 : Original Proceedings of personal hearing of the Disciplinary Authority dated 05.03.2007.
Ex M-13 : Office copy of the final order dated 14.03.2007 of the Disciplinary Authority.
Ex M-14 : Office copy of the order dated 26.03.2007 issued by the Assistant General Manager, Bangalore Branch to the 1 Party.

Documents exhibited on behalf of the 1 Party : Nil

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 31/2012)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल. 39025/01/2010 आई आर (बी. II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri D. SREEVALLABHAN, B. Sc., LL.B, Presiding Officer
(Wednesday the 7th day of August, 2013/16th Shravana, 1935)

I.D. 31/2012

Petitioner : Smt V. K. Nirmala W/o Shri N. N. Balaraman Nakklikattu House Allapra PO Perumbavur - 683553

By Adv. Shri Ashok B Shenoy

Respondent : The Assistant General Manager, Bank of Baroda Regional Office Vasudeva Buildings T D Road, Ernakulam Kochi - 682011

By M/s. B S Krishnan Associates

This case coming up for final hearing on 05.08.2013 and this Tribunal-cum-Labour Court on 07.08.2013 passed the following:

AWARD

This petition is one under Section 2A(2) of the Industrial Disputes Act, 1947.

2. Workman filed this petition challenging the validity of the termination of her services in the management bank on 07.01.2012. The allegations in the petition, in brief, are that she was employed in the subordinate cadre as a sweeper in the services of the management bank from 20.07.2009 and she was continuously working without any complaints until termination of her service. The termination was effected in violation of Section 25F of the Industrial

Disputes Act and paragraphs 522 to 524 of the Sastri Award. Hence she prays for passing an award declaring the action of the management bank as illegal and for reinstating her in service with back wages, continuity of service and other attendant benefits.

3. Management filed written statement denying the allegations in the petition as to the legality of the termination of service and contending that the petitioner was only a daily wager on casual/temporary basis and that the termination of her service is proper, legal and not in violation of the provisions of the Industrial Disputes Act and the Sastri Award.

4. Petitioner filed replication denying the contentions in the written statement and reaffirming the allegations in the petition.

5. After submitting the pleadings the case was posted for evidence and at that time petitioner filed IA 69/2013 with a prayer to withdraw the petition in view of the pendency of ID 20/2013 of this tribunal based on the subsequently made reference with regard to the same issue by the Govt. of India/Ministry of Labour. The IA has been allowed without any objection. Accordingly this petition is dismissed.

The award will come into force one month after its publication in the Official Gazette.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM

Present:

Shri.D.Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Wednesday the 31st day of July, 2013/
 09th Shravana, 1935)

I.D. 30/2012

Petitioner : Shri Dineshkumar B S/o Shri N
 Balakrishna KamathPuthenveedu
 Konnenkudi Road Onnam Mile
 Perumbavur - 683542

By Adv. Shri Ashok B. Shenoy

Respondent : The Assistant General ManagerBank of
 Baroda Regional OfficeVasudeva
 BuildingsT D Road, Ernakulam Kochi –
 682011

By M/s. B S Krishnan Associates

This case coming up for final hearing on 31.07.2013
 and this Tribunal-cum-Labour Court on the same day
 passed the following:

AWARD

Challenge is made by the workman with regard to
 the termination of his service by the management bank on
 07.01.2012 by filing this petition under Section 2A(2) of
 the Industrial Disputes Act, 1947.

2. It is alleged in the petition that the workman was
 in continuous service of the bank as peon from 13.07.2009
 until termination of his service orally by the Manager of
 the Perumbavoor Branch of the bank in violation of the
 provisions contained in Section 25F of the Industrial
 Disputes Act, 1947 and paragraphs 522,523 and 524 of the
 Sastri Award.

3. Management filed written statement denying the
 claim of the petitioner that he was a regular employee in
 continuous service and contending that he was only a
 daily wager on casual/temporary basis and that his
 disengagement is proper, legal and is not violative of the
 provisions of the Industrial Disputes Act, 1947 or the Sastri
 Award.

4. Workman filed replication denying the contentions
 in the written statement and reaffirming the allegations in
 the claim statement.

5. After submitting pleadings the case was posted
 for evidence. At that time workman filed IA 71/2013 with a
 prayer to withdraw the petition in view of the order of
 reference made by the Govt. of India/Ministry of Labour
 with regard to the same issue and taken on file as ID
 18/2013 of this tribunal. The IA has been allowed without
 any objection. Accordingly this petition is dismissed.

The award will come into force one month after its
 publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and
 typed by her, corrected and passed by me on this the
 31st day of July, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1983.—औद्योगिक विवाद अधिनियम, 1947 (1947
 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ
 बडौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच
 अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक
 अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 32/2012)
 को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त
 हुआ था 1

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1983.—In pursuance of Section 17 of the
 Industrial Disputes Act, 1947 (14 of 1947), the Central
 Government hereby publishes the Award (Ref. No. 32/2012)
 of the Cent. Govt. Indus. Tribunal-cum-Labour Court,
 Ernakulam as shown in the Annexure, in the industrial
 dispute between the management of Bank of Baroda, and
 their workmen, received by the Central Government on
 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM

Present:

Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Friday the 31st day of May, 2013/10th Jyaistha, 1935)

I.D. 32/2012

Petitioner : Shri Sudhish UR S/o Shri K. N.
 RaghunathanUnnakuppa Puthenpurayil
 South Maradi Muvattupuzha- 686673

By Adv. Shri Ashok B Shenoy

Respondent : The Assistant General Manager Bank
 of Baroda Regional OfficeVasudeva
 BuildingsT D Road, Ernakulam Kochi –
 682011

By M/s.B S Krishnan, Associates

This case coming up for final hearing on 31.05.2013
 and this Tribunal-cum-Labour Court on the same day
 passed the following:

AWARD

Challenge is made as to the termination of the services of the workman by the management bank by filing this petition under Section 2A(2) of the Industrial Disputes Act, 1947.

2. In the petition it is alleged that the workman who was in continuous service as a peon in the Moovattupuzha Branch of the management bank from 22.01.2009 was illegally terminated from service on 16.08.2011 in violation of the provisions of the Industrial Disputes Act, 1947 and paragraphs 522, 523 and 524 of Sastri Award. Hence he prays for passing an award declaring the action of the management as illegal and for reinstating him with full back wages and other attendant benefits.

3. Management bank filed written statement denying the claim of the workman that he was a regular employee and contending that he was engaged only as a daily wager on casual/temporary basis during the period from 22.01.2009 to 16.08.2011 and that he was not engaged 240 or more days at any point of time. Action of disengagement is proper, legal and valid and is not in violation of the provisions of the Industrial Disputes Act, 1947 or Sastri Award. Hence he is not entitled to any relief.

4. Workman filed replication denying the contention in the written statement and reaffirming the allegations in the claim statement.

5. At the time when the case stood posted for evidence workman filed IA 48/2013 to withdraw the petition in view of the order of reference made by the Govt. of India/Ministry of Labour with regard to the same issue and pending before this Tribunal as ID No.19/2013. The IA is allowed without any objection from the side of the management. Hence this petition is dismissed.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of May, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 22/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-I, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present:

Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer
(Tuesday the 14th day of May, 2013/10th Vaisakha, 1935)

I.D. 22/2012

Petitioner : Smt. Zeenath Babu W/o Shri B Babu
Joseph Kottayil House Nellithanam,
Karur PO Palai Kottayam District

By M/s. H B Shenoy, Associates

Respondent : The Regional Manager, Bank of Baroda
Vasudeva Buildings T D Road
Ernakulam -682011

By M/s. B S Krishnan, Associates

This case coming up for final hearing on 14.05.2013 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is a petition filed under Section 2A(2) of the Industrial Disputes Act, 1947.

2. The allegations in the petition, in brief, are that the workman, Smt. Zeenath Babu, was employed as a sub-staff in the services of the management bank on 10.09.2009 and she was discharging all the duties entrusted with her diligently and honestly without any complaint. While so her service was illegally terminated on 20.10.2011 in violation of the provisions contained in the Industrial Disputes Act, 1947. Hence she filed this petition with a prayer to pass an award declaring the action of the management of terminating her services in the bank as illegal and unjust and for directing the management to reinstate her in service with full back wages, continuity of service and other benefits.

3. Management filed written statement contending that she was not employed in the management bank at any time in regular vacancy by the competent authority. She was only intermittently engaged as daily wager on casual/temporary basis during 10.09.2009 to 20.10.2011. She was not engaged continuously for more than 240 days. The allegation that there was illegal termination of her services in violation of the statutory provisions is baseless and incorrect. Hence she is not entitled to any of the reliefs claimed in the petition.

4. Workman filed rejoinder refuting the contentions of the management bank and reaffirming the allegations in the petition.

5. After filing rejoinder workman filed IA 40/2011 seeking permission to withdraw the petition stating that it is not necessary to further proceed with this case in view of the pendency of ID 10/2013 before this Tribunal with regard to the very same issue.

6. As per the IA, the petition is sought to be withdrawn reserving the rights of the petitioner to pursue all her claims in ID 10/2013. At the time of argument learned counsel for both sides have submitted that the said IA is based on an order of reference made by the Govt. of India/ Ministry of Labour and hence all the claims of the petitioner can be adjudicated in that case.

7. Withdrawal of this petition will not in any way affect her right to pursue her claims relating to the very same issue raised in that ID. It is needless to say that there is no necessity to reserve the right to pursue such claims for the withdrawal of this petition. IA 40/2013 was allowed without any objection from the side of the management. Hence this petition is dismissed.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 14th day of May, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1985.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल. 39025/01/2010 आई आर (बी. II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present:

Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer
(Tuesday the 30th day of April, 2013/10th Vaisakha, 1935)

I.D. 24/2012

Petitioner : Smt. T. Syamalakumari W/o Shri B. Appukuttan Nair, Athira, S. N. Junction Thrippunithura -682301

By Adv. Shri Ashok B Shenoy

Respondent : The Assistant General Manager Canara Bank, Circle Office, Annexe Building, Thali Samooham Road, Chalappuram Kozhikode -673 002

By M/s. Menon & Pai

This case coming up for final hearing on 29.04.2013 and this Tribunal-cum-Labour Court on 30.04.2013 passed the following:

AWARD

This petition filed under Section 2A(2) of the Industrial Disputes Act, 1947 is for declaring the punishment of 'compulsory retirement with superannuation benefits' imposed on the workman Smt. T. Syamalakumari, ex-employee of the management bank, as illegal and unjust and also for directing the bank to reinstate her with full back wages, continuity of service and other attendant benefits.

2. According to her she was employed as a clerk in the services of the management bank and joined in service on 21.07.1987. While she was working in the Ernakulam South Branch of the bank she was transferred to the Manjeri branch. Her request for modification of the transfer order through a representation was declined by the management. Hence it was challenged by her by approaching the Hon'ble High Court of Kerala. As it has not become successful an industrial dispute was raised through union.

While pursuing it chargesheet dated 09.12.2007 was issued to her and after conducting enquiry she was imposed with the penalty of compulsory retirement with superannuation benefits by the disciplinary authority. The appeal preferred by her before the Appellate Authority was dismissed. Hence she raised an industrial dispute against the management challenging the imposition of penalty. The conciliation proceedings before the Assistant Labour Commissioner (Central), Ernakulam ended in failure and hence she filed this petition before this Tribunal challenging the validity of the enquiry and the punishment imposed on her.

3. Before filing written statement by the management bank, petitioner filed IA 28/2013 for withdrawal of this petition stating that it is not to be proceeded with in view of the reference made by the Govt. of India, Ministry of Labour taken on file as ID No.26/2012 of this Tribunal. It was sought to be withdrawn reserving the rights of the petitioner to pursue all her claims in ID 26/2012. At the time of argument learned counsel for both sides have submitted that the ID is also with regard to the same matter and hence the same is only to be proceeded with. Withdrawal of this petition will not in any way affect the right of the petitioner to pursue her claims in the ID with regard to the same issue. IA 28/2013 was allowed since it was not opposed by the management. Hence this petition is dismissed.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of April, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 23/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial

dispute between the management of Canara Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Tuesday the 27th day of August, 2013/
05th Bhadrapada, 1935)

I.D. 23/2012

Petitioner : Smt. S. GeethaW/o Shri S. Anilkumar
Velikattu, NTV Nagar 56A, Kadappakada
Kollam - 691008

By M/s. H. B. Shenoy, Associates

Respondent : The Chairman & Managing Director
Canara Bank Head Office, 112 JC Road
Bangalore - 560002

By M/s. Menon & Pai

This case coming up for final hearing on 27.08.2013 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

Workman filed this petition under Section 2A(2) of the Industrial Disputes Act, 1947 with the prayer for directing the management to reinstate her in service after declaring the punishment of 'compulsory retirement with superannuation benefits' without disqualification for future employment imposed on her is illegal and unjust.

2. In the petition it is alleged that she had joined the services of the management bank as a clerk on 19.01.1989 at the Malappuram Branch and later when she was working in Thrikovilvattom Branch she was suspended from service in September, 2009. Disciplinary proceedings were initiated against her and after conducting enquiry she was imposed with the penalty of compulsory retirement with superannuation benefits by the disciplinary authority. The appeal filed by her before the Appellate Authority was dismissed on 18.01.2012. Hence she raised an industrial dispute through her union. As the conciliation proceedings did not become fruitful she filed this petition challenging the validity of the enquiry and the punishment imposed on her.

3. Management filed written statement denying the allegations in the petition as to the validity of the enquiry and legality of the punishment imposed on the petitioner.

It is contended that she was imposed with the penalty after conducting a proper enquiry after affording sufficient opportunities to her. The findings of the Enquiry Officer were entered into based on evidence and after considering all the circumstances. The misconducts charged against her are grave and hence she was imposed with the punishment of compulsory retirement with superannuation benefits. Hence she is not entitled to any relief.

4. Petitioner filed replication denying the contentions in the written statement and reaffirming the allegations in the petition.

5. After submitting the pleadings workman filed IA 84/2013 with the prayer to withdraw the petition stating that reference is already made by the Govt. of India/Ministry of Labour with regard to the same issue and the same is pending before this tribunal as ID 13/2013 so that it is not necessary to further proceed with this case. The IA has been allowed without any objection. Accordingly the petition is dismissed.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of August, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1987.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोच्चि पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट संदर्भ संख्या 01/2011 को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-39025/01/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Wednesday the 12th day of June, 2013/
22nd Jyaishta, 1935)

Complaint No. 1/2011

Complainant : Shri M. P. Parameswaran Nair S/o Shri
Kunju Nair General Secretary Cochin
Port & Dock Employees Union (AITUC)
Wellington Island Cochin - 682009

By Advs. Shri Youseff & Smt. Aysha

Opposite Party : The Chairman Cochin Port Trust
Wellington Island Cochin - 682003

By M/s.Menon & Pai

This case coming up for final hearing on 11.06.2013 and this Tribunal-cum-Labour Court on 12.06.2013 passed the following:

AWARD

Cochin Port and Dock Employees' Union filed this complaint under Section 33A of the Industrial Disputes Act, 1947.

2. It is the case of the complainant that it represents considerable number of workers and employees of the opposite party, the Cochin Port Trust, arrayed as one of the parties in ID No.4/2011 pending before this tribunal. The said industrial dispute was raised since the opposite party in total violation of clause 36 of the settlement dated 02.08.2000 altered the usual practice in the Cargo Section unilaterally by issuing circulars under the guise of ensuring Access Control and Security in the port area. During the pendency of the ID opposite party issued circulars in violation of the said clause in that settlement changing the conditions of service by introducing new times for shift duties without approval of this tribunal as provided under Section 33 of the Industrial Disputes Act, 1947.

3. Opposite party after appearance filed written statement challenging the maintainability of the petition and contending that there is no relationship between the circulars and the dispute in the ID that 'whether the action of the management of Cochin Port Trust in withdrawing a customary benefit hitherto enjoyed by the composite workmen without proper notice is justifiable? What relief the concerned workmen are entitled to?'

4. After filing the written statement the case was posted for rejoinder, but no rejoinder was filed by the complainant.

5. After posting the case for evidence union was continuously absenting and hence set ex-parte. Management filed affidavit in support of the contentions raised in the written statement. As the complainant has failed to substantiate the allegations in the complaint as to the change of condition of service relating to the dispute involved in ID 4/2011 it can only be held that there was no change of service condition during the pendency of ID No.4/2011 through the issuance of the circulars specified in the complaint.

6. Hence an award is passed finding that there is no change of condition of service in relation to the dispute in ID 11/2011 through the issuance of the circulars and hence the complaint is dismissed.

The Award will come into force one month after its publication in the Official Gazette.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12011/10/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/10/2012 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, GUWAHATI,
ASSAM**

Present:

Shri L. C. Dey, M.A., LL.B., Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 25 of 2012

In the matter of an Industrial Dispute between :-

The Management of Union Bank of India,
Central Office,
Mumbai.

Versus

Their workman rep. by the General Secretary,
Union Bank Employees Union (NER),
Regional Office, Chandmari,
Guwahati.

Appearances:

For the Workman. : Mr. J. Chakrabarty, Workman
representative.

For the Management : Mr. B. Bhattacharjee,
Management representative.

Date of Award: 28.04.2014.

AWARD

1. This Reference has been initiated on an Industrial Dispute raised by the workman Shri Nazmul Karim, Ex-subordinate Staff, represented by the General Secretary, Union Bank Employees Union (NER) against the Management of Union Bank of India, Central Office, Mumbai, consequent upon dismissal from service to Sh. Nazmul Karim, Ex-Subordinate Staff; which was referred by the Ministry of Labour for adjudication vide their Order No.L-12011/10/2012-IR (B-II) dated 21.09.2012. The Schedule of this reference is as under:

SCHEDULE

“Whether the action of the management of Union Bank of India in dismissing Sh. Nazmul Karim, Ex-Subordinate Staff without notice from the services of the bank, vide Order dated 14.12.2007 and not providing him the copy of letter No.NRO/CMRD/07/672/03 dtd. 06.11.03 in the enquiry proceedings, is legal & justified? What relief the workman concerned is entitled to?”

2. On receipt of the order from the Ministry of Labour, Government of India, New Delhi, this reference case was registered and notices were issued by Registered Post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statement along with the relevant documents in support of their claim. Accordingly both the parties appeared and submitted their respective claim statement/written statement.

3. The fact of the case of the workman, in nutshell, is that the workman joined the services of the Union Bank of India on 20.2.1982 at Tuempren Branch as Subordinate Staff and thereafter he was transferred to Guwahati Main Branch of the Bank in 1984. Finally he was transferred to Nawgaon Branch in 1989. At that time while he was working

as Daftary an incident took place at Nawgaon Branch while a number of amounts totaling Rs.30,900/- collected by the workman on different dates from November, 2002 to August, 2003 from Bakijai office for repayment of loans by some borrowers of the Banks and the said amount was not deposited by the workman to the Bank. Before making good the deposit by the workman the matter came to the knowledge of the Branch Manager, when the workman explained that due to serious financial crisis in his family he committed the mistake and agreed to refund the money to the Bank. Accordingly the workman deposited Rs.30,900/- to the Bank on 23.9.2003. The act committed by the workman was considered by the Regional Manager, Guwahati Region of the Bank to be an offence and under his instruction the Branch Manager issued two memoranda to the workman on 20.11.2003 censuring him for commissioning of the said offence and cautioned him against repetition of such offence. Both the memoranda were entered into the service record of the workman and thereby the matter was closed by the Regional Manager awarding the punishment to the workman as provided to the Bipartite Settlement. The workman also did not challenge the order of punishment imposed upon him by the Management. On receipt of the lessons by the workman for his aforesaid offence, the Bank reposed confidence upon him and thereby the workman became more and more reliable and helpful for the Bank, and he was not only utilized to bring more and more business for the bank but also in the recovery of Bank's some of those loans which were declared as Non Performing Asset. Even in the month of April, 2005 he found in the Nawgaon Branch premises a packet containing Rs.47,000/- unclaimed and unnoticed by any body and he handed over the same to the Branch Manager and the honesty of the workman was appreciated by all. Surprisingly after transfer the then Regional Manager, without any reason, the same matter of the workman was reopened by the next Regional head and a show cause memorandum was issued by the Chief Manager of the Regional Office, Guwahati as new Disciplinary Authority on 12.12.2005 i.e. after more than 2 years of the closure of the matter by the Regional Manager, who was never a Disciplinary Authority. The workman submitted a letter on 23.12.2005 in reply to the memorandum, requesting the Management to provide him with a copy of letter No.NRO/CMRD/07/672/03 dated 06.11.03 whose reference was there on communication of the Management to him on the said issue, but the Management vide their letter dated 12.1.2006 asked the workman for his explanation stating the said letter was not having a material bearing to the show cause memorandum. Then the workman through his letter dated 28.1.2006 reiterated his request for the said letter dated 6.11.2003 but the management allowed the workman last opportunity for submission of his explanation vide their letter dated 7.3.2006 while the workman again reminded the Management for providing

him with a copy of the letter dated 6.11.2003. Even the Management was adamant not to supply the copy of the said letter dated 6.11.2003 and issued charge sheet memorandum dated 25.1.2007 against the workman framing the charges viz. (1) doing acts prejudicial to the interest of the Bank involving or likely to involve the Bank in monetary loss; (2) Willful damage or attempt to cause damage to the property of the Bank which amounts to gross misconduct and (3) breach of rule of business of the bank and instructions for running of any department which amounts to minor misconduct. The Management also informed the workman that they had decided to hold a departmental enquiry into the charges mentioned in the charge sheet and Sri Amit Banerjee was appointed as Enquiry Officer.

Accordingly the enquiry was held in the premises of Regional Office at Guwahati on 25.5.2007 and 20.5.2007. During the enquiry at the instance of the defence representative the Enquiry Officer directed the management representative to furnish the copy of the letter dated 6.11.2003 to the workman as sought for by him earlier but the Management did not produce the document. Mr. K.C. Biswas, the then Branch Manager of Nowgaon Branch who was examined as Management witness. The Enquiry officer after conducting the enquiry, found the following facts;

- (a) The Regional Manager, Guwahati after conducting an investigation into the allegations against the workman found the workman guilty and administered to the workman 'warning' which is laid down in the industry level bipartite settlement dated 10.4.2002 as punishment both for gross and minor misconducts; and the workman was also ordered to refund the money involved in the case which the workman complied with.
- (b) There is no provision in the industry level bipartite settlement for holding an enquiry after a case is disposed of with the punishment unless the employee concerned challenges the findings and the punishment order issued by the Disciplinary Authority. The Disciplinary Authority vide their letter dated 26.10.2007 ordered punishment of dismissal of the workman but how after lapse of 4 years discovered that the action of the workman lead to the loss of confidence and faith by the Bank upon the workman. Therefore the decision taken by the Management after two years of closures of the case to hold the departmental enquiry and the order passed by them to that effect were against the principles and norms prescribed in the industry level bipartite settlement;

- (c) After closure of the said matter no further allegation was there which could necessitate the Management to initiate fresh disciplinary action, instead, the workman handed over Rs.47,000/- to the Branch Manager which he found un noticed by others in the Branch premises;
- (d) the workman was very much helpful to the bank in securing business and recovery of huge non performing asset (NPA);
- (e) The Branch Manager admitted that on account of the said incident the Bank did not suffer any financial loss and the same did not tarnish the Bank's image in any way before the public.

Subsequently the Union vide its letter dated 27.6.2007 wanted to know from the Management the reason for such discriminatory attitude, stating 3 concrete examples of such discriminatory attitude which were brought to the notice of the Assistant General Manager, Regional Office, Guwahati under whose instance the case of the workman was reopened after two years of its closures. The Disciplinary Authority vide its letter dated 26.10.2007 passed order proposing a punishment of dismissal from the services of the Bank against the workman, observing that the charges framed against the workman were proved. The Union contended that while the matter was closed by the Regional Manager in November,2003 the new Disciplinary Authority after 4 years discovered that the action of the workman led to loss of confidence and faith by the Bank upon him whereas the Management was found to repose confidence and faith upon the workman till that time for securing business and recovery of NPA and also getting the duties of higher cadre (clerical cadre) in cash and clearing departments performed by him for 208 days in a year from October 2006 to October,2007 in exigencies of the Bank. Thus the Enquiry Officer could not play his roll as independent body and therefore his findings suffered from biasness. The Union also considered the order of the Disciplinary Authority and issued a letter dated 03.11.2007 addressed to the AGM, Regional Office with a copy to General Manager, Vigilance of the Bank at the Central Office but there was no response to the said letter of the Union. The Union further stated that before imposing punishment the Disciplinary authority granted a personal hearing to the workman on 12.12.2007 while the workman appeared and submitted his petition both orally and in writing but the Disciplinary Authority vide their letter No. NROG:HRM:DA:468-2007 dated 14.12. 2007 passed the final order of punishment of dismissal from services of the Bank to the workman without considering the submission of the workman.

The workman preferred an appeal on 11.1.2008 before the Appellate Authority i.e. Dy. General Manager (HRM)

against the order of the Disciplinary Authority. The Appellate Authority granted a personal hearing to the workman which was held on 15.5.2008 i.e. after more than 4 months at the Central Office of the Bank which should have been held within one month of the receipt of the appeal the same should be disposed of within one month from the date of personal hearing. Ultimately the Appellate Authority vide its order dated 7.6.2008 rejected the appeal without showing any valid reason and without applying his mind while considering the appeal. Thereafter the Union addressed a letter dated 20.10.2008 to the Chairman and the Managing Director of the Bank for their intervention in the matter since he was the principal Disciplinary Authority in the Bank but there was no response to the said letter. Then the Union raised an Industrial Dispute upon which conciliation meeting was held on 10.01.2012 but it failed and hence this reference.

4. The Management of Union Bank of India contested the proceeding by filing written statement, stating, inter-alia that the present reference is not maintainable in as much as, the workman Nazmul Karim is not a workman within the meaning of Industrial Dispute Act and that the appropriate government referred the purported Industrial Dispute without considering the provision of the Industrial Dispute Act and relevant issue is not an Industrial Dispute Act and as such, the Notification dated 21.9.2012 is illegal; that the issue referred to by the Ministry in their Notification do not constitute an Industrial Dispute within the meaning of law and as such, this Tribunal has no jurisdiction to adjudicate the alleged issue and hence, the Management raised the preliminary issue about the maintainability of the reference. The Management stated that the Union has no *locustandi* to raise an Industrial Dispute before the Tribunal in as much as, the issue sought to be raised is not an Industrial Dispute u/s 2(k) of the I.D. Act and the workman Nazmul Karim is not a workman within the definition of Section 2(s) of the I.D. Act, 1947; and that the allegations/contention raised against the Management Bank are illegal, false, fabricated and unjustified; and the management Bank being a Nationalised Bank has to follow the laid down policy and procedure and they have their own Rules governing the service conditions of their employees and the action taken against the workman under relevant provision of Rules governing the service conditions of the employees of the Bank. It is also mentioned by the Management that the Union has not shown whether it is a registered Trade Union under the Provision of Trade Unions" Act, 1926 and they have not shown whether under the terms of registration or otherwise they are entitled to organize/espouse any industrial dispute on behalf of the workman employed in their bank by producing copy of the Form A of the application for registration as Trade Union under Trade Union Act, the copy of its Constitution showing the number of its office bearers. It is added that the Union

ought to show whether the General Secretary of the Union Bank Of India Employees Union (NER) is duly authorized to raise the demand on behalf of the present workman and to produce a copy of the extract of minutes of the meeting of the Managing Committee/General Body in original to show that a decision was taken in such meeting in this regard. The Union has also not produced any document to show whether the names of the office bearers of the Union and as such, authorized to represent the persons covered by the said Notification and also to show that Sri Nazmul Karim is a member of the Union, who had submitted the application for Union's membership. The Union also contended that the allegations made against the Management Bank are illegal, false, frivolous, fabricated, unjustified, perverse and without any basis of law as well as fact. Hence, the management prayed for framing preliminary issue on the maintainability of the claim before the matter is taken up on merit.

Further plea of the Management is that Sri Nazmul Karim, the subordinate staff of Nawgaon Branch receiving some amount with his signature from Bakijai Office, Nawgaon towards recovery of loan account since 2002. He collected an amount of Rs.30,900/- from Bakijai Office, Nawgaon which was not deposited by him to the respective loan account in the Bank and thus Sri Nazmul Karim misappropriated the Bank's money. On a joint drive by the Branch Manager, Nawgaon Branch of the Bank and the Bakijai officials of the Office of the Deputy Commissioner, Nawgaon the matter came to the light and Sri Nazmul Karim was asked about the fact while he admitted that he had collected the amount from the Bakijai Office, Nawgaon. Thereafter the Regional Office of the Management Bank, Guwahati vide their letter No.NRO/HRM/539/05 dated 12.12.05 asked the workman to explain within 10 days under what circumstances he committed the aforesaid lapse and why disciplinary action should not be taken against him for not depositing the amount of Rs.30,900/- collected by him from the Bakijai Office, Nawgaon during the period 27.9.2002 to 13.8.2003. However on persuasion of the Branch Manager, Sri Nazmul Karim made good the misappropriated amount by depositing the same on 23.9.2003. On receipt of the said letter the workman did not submit any reply to the Management Bank while the Management by another letter dated 12.1.2006 asked the workman to submit his explanation within 3 days from the date of receipt of the said letter failing which the matter would be proceeded as they deem fit and proper. But the workman after receiving the said letter dated 12.1.2006 on 27.1.2006 did not submit any reply. Then the Management Bank by their letter dated 7.3.2006 again asked the workman to submit his explanation within 3 days from the date of receipt of the letter dated 7.3.2006. Then the workman submitted his reply to the show cause on 17.3.2006 but the said reply was not satisfactory and hence, the Management issued formal charge sheet on 25.1.2007 for—
Gross Misconduct :

1. Doing acts prejudicial to the interest of the Bank involving or likely to involve the Bank in monetary loss.

2. Willful damage or attempt to cause damage to the property of the Bank.

Minor misconduct :

Breach of rule of business of the Bank and instructions for running of any department.

Accordingly the Management Bank decided to hold a departmental enquiry against the workman; and appointed Sri Amit Banerjee, Manager (HR), Nodal Office, Kolkata as Enquiry Officer and asked the workman to submit his explanation on the charges framed against him, within a period of 15 days from the date of receipt of the charge sheet dated 25.1.2007 directly to the Enquiry Officer. The Management also authorized Sri B.C.Jha to represent the Management and notices of enquiry were issued to both the management and the workman by the enquiry officer on 29.3.2007 fixing the date of enquiry on 24.4.2007 at Regional office, Guwahati. The workman informed the Enquiry officer that Sri Jagannath Chakrabarty, Dy. General Secretary of the Association would represent him. Accordingly the enquiry was conducted by the Enquiry Officer in compliance with the principle of natural justice on different dates namely 25.5.2007, 26.5.2007 in presence of both the parties. The copy of the proceeding of the enquiry was duly received by the Presenting Officer and the workman Nazmul Karim acknowledging receipt of the same. On closure of the evidence of the Management the workman adduced his evidence and submitted his written brief before the Enquiry Officer. Thereafter the Enquiry Officer submitted his report and findings on 4.7.2007 holding that the charges levelled against Sri Nazmul Karim were proved. A copy of the report and findings of the enquiry was forwarded to the workman but the workman did not submit any representation against the report and findings of the Enquiry Officer. Thereafter the Disciplinary Authority considered the report and findings of the Enquiry Officer along with other documents and also allowed the personal hearing of the workman and after giving all opportunities to defend the case of the workman, the Disciplinary Authority imposed punishment on the workman dismissing him from the services of the Bank with immediate effect order dated 14.12.2007 for gross misconduct. On receipt of the dismissal order the workman preferred an appeal before the Appellate Authority on 11.1.2008. The Appellate Authority vide its letter dated 27.2.2008 intimated the workman that the appeal would be heard on 17.3.2008. Upon which the workman filed a representation expressing his inconveniences to attend the personal hearing on 17.3.2008 while the Appellate Authority considering his request fixed 31.3.2008 for personal hearing. Accordingly the Appellate Authority heard the workman on 15.5.2008 finally and on perusal of record and after applying his mind the Appellate Authority

by a speaking order rejected the appeal of the workman vide his order dated 7.6.2008. Hence, the management prayed for rejecting the prayer of the workman.

5. The workman on receipt of the W.S. filed by the Management, submitted Addl. W.S. alleging that none of the authority of the Management i.e. The Chairman and the Managing Director and Assistant General Manager of the Union Bank of India to whom the notices were served, furnished the W.S. which was submitted by some one, authorization by either of the Management is not apparent; and that they have nothing to comment on paragraphs-1, 2, 3, 5, 7, 8, 10, 19, 21, 22, 25, 26, 27, 30, 31, 32, 33, 34, 35 and 36 of the W.S. filed by the Management. The workman mentioned that Md. Nazmul Karim is a Bank employee and he is a workman within the meaning of Section 2(s) and the dispute raised by the workman is an industrial dispute u/s 2(k) of the I.D. Act, 1947 and as such, the present dispute is an industrial dispute and this Tribunal is the appropriate authority to adjudicate upon the reference. The Union also submitted that their Union is registered under Trade Union Act, 1976 which was registered vide Registration No. 1403 and the Registration can be produced before the Tribunal if required; and that as per provision of Section 36(1)(a) of the I.D. Act, 1947 a workman who is a party to the dispute shall be entitled to be represented in any proceeding under the Act by any member of the executive or other office bearers of a registered Union, being an office bearer has been representing the workman which is not at all illegal. The Union added that long back the Management themselves introduced a system calling "check off" for deduction of Union's subscription of the workman of the Bank who was the members of any Trade Union and since the system of deduction of Union fees is maintained by the Management let the Management first deny that they had not deducted any union subscription of the workman in favour of the petitioner Union. The Union also contended that it is a misleading information to this Tribunal that the report and findings of the Enquiry Officer was forwarded to the workman for submission of his representation against the report and findings of the Enquiry Officer. In fact the Enquiry Officer did not at all sent the report and findings to the workman rather he sent the same to the Disciplinary Authority.

6. The Management, on the other hand, reiterating the contention made in their W.S., submitted their reply to the Additional Written Statement filed by the Union stating, inter-alia, that the workman Nazmul Karim is not a member of the Union Bank of India Employees Union, who admitted his guilt for committing misappropriation and admission of guilt need not be proved; and as the workman misappropriated money he deserved dismissal from the service of the Bank. The Management mentioned that they have supplied all the documents available with them to the workman and the principles of natural justice was followed before taking any action against the

workman. It is also averred by the Management that earlier only investigation was done and no charge or enquiry etc. were held and therefore the Management decided to issue charge sheet and formal show cause notice memorandum and thereafter the enquiry was held. It is stated by the Management that no punishment was imposed earlier to the petitioner as alleged, and the punishment can be imposed formally only after issue charge sheet holding departmental enquiry, considering the findings of the enquiry and the relevant documents connected with the departmental proceeding, the Disciplinary Authority, on being satisfied with the findings the workman guilty in the enquiry, after hearing the workman and observing the principle of natural justice, punishment was ordered against the workman dismissing him from service.

7. Both the parties adduced evidence and submitted documents in support of their respective cases. The workman examined Mr. Jagannath Chakrabarty, Vice-President of the Union Bank Employees Union (NER) alone while the Management examined two witnesses namely Mr. Bidit Bhattacharjee (MW.1), Sr. Manager of Human Resources Department of the Union Bank of India, Regional Office, Guwahati and Mr. Velmurugan, Sr. Manager, HR Department of the Union Bank of India, Regional office, Guwahati as MW.2.

8. According to the W.W.1, Mr. Jagannath Chakrabarty, the workman Nazmul Karim was working as subordinate staff of Union Bank of India, Nawgaon Branch since 1989. In the year 2003 the workman collected money amounting to Rs. 30,900/- on different dates from the Office of the Deputy Commissioner being the repayment of loan of certain borrowers but he did not deposit the same to the Bank owing to serious hardship in his family as his elder brother had been suffering a serious heart attack and their land and property were washed away due to heavy flood. On coming to know the incident, the Branch Manager asked the workman to deposit the entire amount to the bank and immediately he did it. Mr. J.K. Neog, the then Regional Head of Union Bank of India in the North Eastern Region, who after considering the whole matter instructed the Branch Manager of Nawgaon Branch to issue memorandum to the workman. Accordingly on 20.11.2003 the Branch Manager as per instruction of the Regional Head issued 2 memorandum warning and advising the workman not to do and repeat this kind of action in future vide Exhibit-1 and 2 (the xerox copies proved on admission and without any objection by the management representative). After lapse of 2 years the Regional Head all on a sudden issued a show cause memorandum on 12.12.2005 to the workman asking him to show cause within 10 days vide Exhibit-3 (the xerox copies proved on admission by the management representative). The workman, in response to the show cause memorandum requested the Management to supply the documents i.e.

letter No.NRO/CMRD/07/672/03 dated 6.11.03 to him in order to enable him to give proper reply to the show cause memorandum vide Exhibit-4 (the zerox copies proved on admission by the management representative). The Management, in reply to the said show cause notice issued memorandum to the workman vide Exhibit-5 (the zerox copies proved on admission by the management representative) asking explanation from the workman who wrote a letter to the Management on 28.8.2006 stating that by not providing the copy of the letter dated 6.11.03 the Management has violated the principle of natural justice. Even then the Management did not provide the copy of the said document rather issued another Memorandum on 7.3.2006 vide Exhibit-7(the zerox copies proved on admission), while the workman vide his letter dated 17.3.2006 prayed for supplying the copy of the document having a direct connection with the issue, for submission of his reply vide Exhibit-8 (the zerox copies proved on admission by the management representative). Thereafter the Management issued charge sheet against the workman vide Exhibit-9 (the zerox copies proved on admission by the management representative) and a departmental enquiry was proceeded. The Management conducted enquiry on 25.5.2007 and 26.5.2007 vide Exhibit-10 and Exhibit-11 (the documents have been proved without objection) and in that departmental enquiry the W.W.1 assisted the workman while the workman prayed for supplying the copy of letter dated 6.11.2003. Immediately the Enquiry Officer directed the Management to supply the documents even then the Management did not supply taking the plea that it was internal communication between the Branch Manager and the higher authority. The W.W.1 also said that in the enquiry proceeding the Management witness, the then Branch Manager who issued Exhibit-1 and Exhibit-2 stated in course of his cross-examination that the caution and warning given to the workman vide Exhibit-1 and 3 were not casual remarks which were given after proper application of mind; and that after refunding Rs.30,900/- the Bank's interest was fully protected. It is also mentioned that the witness namely the then Branch Manager further stated that after the closure of the matter through Exhibit-1 & 2 there was no action on the part of the workman during his tenure which warranted further disciplinary action; and that an amount of Rs.47,000/- lying in a bag in Nawgaon Branch unnoticed by others, which was deposited by the workman to the Branch Manager while all the staff members appreciated the gesture of the workman. The W.W.1 again said that in the inquiry proceeding the then Branch Manager also added that the workman had been very helpful for bringing bank's business and recovered huge Non Performing Asset Accounts. Before the enquiry proceeding the workman stated about the incident of Rs. 30,900/- while he was having his family including one invalid brother and dependent another brother (deceased) who was doing agricultural work and due to unprecedented flood in and

around the Nawgaon their whole agricultural crops and fisheries were completely damaged and hence his family was almost passing in starvation and being the main responsibility to look after the family the position of the workman was committing to suicide. Finding no other way the workman against his conscience had to hold back the money and deposited it on a later date. After completion of the enquiry proceeding the Union wrote a letter on 27.6.2007 to the Assistant General Manager who took the charge from Mr. J.K.Neog, pointing out some examples of discrimination done to the member of this Union (i.e. Union Bank Employees Union (NER) vide Exhibit-12 (the zerox copies proved on admission by the management representative) but the Management did not response to the letter.

The W.W.1 also mentioned that after closing of the enquiry proceeding findings of the enquiry was directly submitted by the Enquiry Officer to the Disciplinary Authority without furnishing the copy to the workman for his comment; and the Disciplinary Authority vide its memorandum dated 16.10.2007 proposed the extreme punishment of dismissal of the workman from the service of the Bank vide Exhibit-13 (the zerox copies proved on admission by the management representative). He further mentioned that the Union again wrote a letter dated 3.11.2007 to the Regional Head pointing out the discrimination towards the workman with a copy to the General Manager (Vigilance) of the Central Office of the Bank vide Exhibit-14 (the zerox copies proved on admission by the management representative) while the Management confirmed the punishment dated 14.12.2007 proposed vide Exhibit-15 (the zerox copies proved on admission by the management representative). On being dissatisfied and aggrieved with the punishment imposed by the Management, the workman preferred an appeal on 11.1.2008 vide Exhibit-16 (the zerox copies proved on admission and without any objection by the management representative). But the Appellate Authority vide their order dated 7.6.2008 rejected the appeal without showing any valid reason and giving opinion on the matter urged by the workman vide Exhibit-17(the zerox copies proved on admission by the management representative). Thereafter the Union preferred appeal in favour of the Chairman and the Managing Director of the Bank vide their letter dated 20.10.2008 as per the Standing Order the Chairman and the Managing Director is the principal Disciplinary Authority vide Exhibit-18 (the zerox copies proved on admission by the management representative), but the Chairman also did not response to the said letter of the Union. Finally the Union raised this dispute before the Assistant Labour Commissioner(C) and conciliation was held but it failed.

The W.W.1 again added that after dismissal of the workman two cases discrimination came to the notice of the Union namely (1) Sri Madhav Chandra Das working as

subordinate staff in Adabari Branch, Guwahati was involved in misappropriation of bank's money, and he was administratively transferred from Adabari Branch to Service Branch; and some disciplinary action was initiated against him but finally nothing was done and this happened in the year 2009. Another incident i.e. one Mr. Madan Chandra Das working as Head Cashier in Sikharhati Branch was involved in misappropriation of bank's and customers money, and he was also administratively transferred to Goalpara Branch, no disciplinary action was taken against him. The workman, during the intervening period of closure of the matter against the workman and his dismissal, the workman performed higher category i.e. in clerical category for about 208 days since October, 2006 to October, 2007 during the exigencies of the Bank. The W.W.1 has proved the letter No.NRO/CMRD/07/672/03 dated 06.11.2003 vide Exhibit-20 issued by the Manager (CMRD), Union Bank of India regarding recovery of misappropriation of bank's fund by the workman and by which the Manager, CMRD has forwarded the letter marked as Exhibit-21, 22, 23, 24 (the extracts from Receiving/Paying Cashier Register for the month of April, 2007) regarding performance of paying cashier duty by the workman dated 16.4.2007 etc. It is further mentioned that the management expressed their inability to produce the documents namely Cash Receiving Register for the month of October, 2006, November, 2006, December, 2006 and March 2007 and Clearing Register along with clearing sheets for the month of October, 2006, November, 2006 and from January, 2007 to October, 2007 as called for vide order dated 4.7.2013 at the instance of the workman. As per the Bank's Circular (Exhibit-25) the Clearing Register (outward) Cash Receipt Books, Cash Payment Book are to be retained/preserved for 9 years. The W.W.1 also produced a copy of the Dainik Assom dated 25.11.2009 wherein at page-8 there is mention of misappropriation of bank's money by Sri Madan Chandra Das, the then Head Cashier of Sikharhati Branch, Union Bank of India apart from other allegations a specific mention of misappropriation of Rs.30,400/-. He also added that as per the Bipartite Settlement between the Bank Association and the workman Union dated 10.4.2002 (Vide Exhibit-27) on Disciplinary action circulated by the Union Bank of India through staff Circular No.4848 dated 6.5.2002 wherein under Clause-12(f), it is mentioned that an enquiry need not be held if an employee is charged with minor misconduct and the punishment imposed to be given as warning or censor ; and that in the case of the workman there was a preliminary investigation but no formal enquiry was done while awarding the punishment of censure and warning as prescribed in the bank's letter marked as Exhibit-1 & 2.

During his cross-examination the W.W.1 stated that he did not know whether the workman informed the Management as to his financial hardship due to his illness of his brother and there is no documentary proof regarding

damage of the house and landed property of the workman by flood. He has also proved a letter marked as Exhibit-A on being produced by the Management regarding report of flood at Nawgaon District obtained by the Management from the Deputy Commissioner establishment. He also said that the workman was a member of their Union and the document in support of the membership of the workman is with the Management as the Management deducted his subscription every month for the Union from his salary. He said that the workman should have deposited the amount immediately after collection from the Deputy Commissioner's Office but he deposited the entire amount on being asked by the Manager; and that the workman received show cause notice from the Management after two years of the alleged occurrence but he did not received any charge sheet before issuance the letters marked as Exhibit -1 & Exhibit-2 by the Management. He also denied the suggestions tendered by the Management that the brother of the workman was not suffering from any heart disease nor there was any flood occurred in Nawgaon District, nor the workman discovered a bag containing Rs.47,000/- in the bank premises in the month of April, 2005, and that the workman himself kept this bag in the premises. He also admitted that there was no written order to the effect that the workman was entrusted to job of clerical work/cash; that the workman was given opportunity of personal hearing and that the workman received the proceeding and findings of the enquiry from the Disciplinary Authority; and that the offence committed by Sri Madhav Ch. Das and Sri Madan Chandra Das, as aforesaid are the same as that committed by the workman.

9. The Management witness No.1, Sri Bidit Bhattacharjee, Senior Manager, Human Resource Department of the Union Bank of India, Guwahati in his deposition mentioned that the workman was a sub staff of Nawgaon Branch of their Bank, who received a total sum of Rs.30,900/- by putting his signature from Bakijai Office, Nawgaon towards recovery of loan amount of the Management Bank since 2002, but he did not deposit the said amount to the Bank. On 12.12.2005 the workman Nazmul Karim was asked to explain under what circumstances he committed the above offence and why disciplinary action should not be taken against him. However the said amount was deposited by the workman on constant persuasion (Exhibit-B) by the Branch Manager of the Nawgaon Branch on 23.9.2003 after a gap of one year inspite of receipt of the letter marked as Exhibit-B the workman did not furnish any reply to the Management. The Management again vide their letter marked as Exhibit-C asked the workman to submit his explanation. Yet the workman did not furnish any reply while the Management again issued a letter dated 7.3.2006 marked as Exhibit-D asking him to submit his explanation giving the workman the last opportunity. Then the workman submitted his reply but on being dissatisfied with the reply the Management charged the

workman for his gross misconduct vide Exhibit-E. The workman although received the charge sheet, did not furnish any reply to the Management and as a result the management decided to conduct the enquiry appointing Sri Amit Banerjee as Enquiry officer, Sri B.C.Jha as Presenting Officer to represent the Management vide Exhibit-F. Mr. Bhattacharjee, the MW.1 mentioned that in the enquiry the workman was assisted by his Union Leader Sri Jagannath Chakrabarty as defence representative, and the Enquiry Officer duly conducted the enquiry on different dates in presence of the workman and his defence representative. The Enquiry Officer examined the Management Witnesses first on being presented by the Presenting Officer. The management witnesses were cross-examined by the defence representative Sri Chakrabarty. He has proved the enquiry proceedings marked as Exhibit-K & Exhibit-L whereupon Exhibit-K(1) to K(9) are the signatures of the Enquiry Officer, A.K.Banerjee, Exhibit-K(10) to Exhibit-K(18) are the signatures of Sri B.C.Jha, the management representative, Exhibit-K(19) to Exhibit-K(27) are the signatures of Mr. J.Chakrabarty, the counsel for the workman. Exhibit-K (28) to Exhibit-K(36) are the signatures of the workman. Exhibit-L(1) to Exhibit-L(3) are the signatures of the Enquiry Officer, Exhibit-L(4) to Exhibit-L(6) are the signatures of B.C.Jha, the management representative; Exhibit-L(7) to Exhibit-L(9) are the signatures of the workman and the Exhibit-L(10) to Exhibit-L(12) are the signatures of Sri J.Chakrabarty, the defence counsel. During enquiry, the Enquiry Officer allowed the workman to cross-examine the witnesses of the management and the workman was also allowed to adduce his evidence. The workman also submitted his written brief through his defence representative. He has proved the findings of the Enquiry Officer marked as Exhibit-G (9pages). It is also stated by the MW.1 that the report and the findings of the Enquiry officer was forwarded to the workman but the workman did not submit any representation against the report and findings of the Enquiry officer. Thereafter the Management, considering the records including the proceeding, documents proved in the enquiry, report and findings of the enquiry and after giving all reasonable opportunities to defend his case, the Disciplinary Authority imposed punishment of dismissal from service of the workman from the Bank vide the order dated 14.12.2007 marked as Exhibit-H. the workman preferred an appeal against the order of dismissal and the Appellate Authority vide its memorandum dated 27.2.2008 (Exhibit-I) heard the argument and after hearing the workman in person, the Appellate Authority by its order dated 7.6.2008 dismissed the appeal vide Exhibit-J.

In course of his cross-examination the MW.1 stated that the workman wanted some documents for filing reply to show cause issued against him vide Exhibit-4 but there is mention in the report of ALC(C) marked as Exhibit-19

that the letter cited by the Union was never been issued by the Regional Office of the Bank. The M.W.1, admitted all the statements made by the management witnesses in the departmental proceeding marked as Exhibit-K wherein in page-6 of the Exhibit-K the management witness No.1 Mr. K.C.Biswas stated that at the outset the defence representative said that the management did not supply the document i.e. the letter dated 6.11.2003 as sought for by the workman; while the Enquiry Officer directed the management representative to submit the document as prayed for by the defence representative, yet the said document marked as Exhibit-20 was not supplied to the workman during the enquiry proceeding. In the said letter marked as Exhibit-20 there was an instruction as follows:- “The sub-staff should be served with an advisory memo and caution him”, and this was instruction of Regional Manager. The MW.1 also admitted that after 2 years of issuance of the instruction the show cause notice marked as Exhibit-B was issued to the workman and in between the said gap of two years no other complaint reported against the workman. He again said that the workman has not denied the allegation of embezzlement of money before the enquiry proceeding; and that the enquiry was initiated against the workman in order to prove the allegation of misappropriation/embezzlement of bank's money, doing acts prejudicial to the interest of the Bank involving or likely to involve the bank in monetary loss willful damage or attempt to cause damage to the property of the bank, breach of rules of business of the bank and instruction for running of any department, but the bank did not suffer any financial loss. The management witness although categorically mentioned that the enquiry proceeding along with its findings was forwarded to the workman, he could not show any forwarding letter by which the same was supplied to the workman. The MW.1 also said that prior to initiation of the departmental proceeding he came to know that the workman found a bag containing Rs.47,000/- in the bank premises which he deposited to the Branch Manager of Union Bank of India, Nawgaon Branch. He also said that as there was no order of the bank for entrustment of the duties of the workman in cash and clearing Branch he could not say whether the management of bank lost its confidence upon the workman. He also said that from the Exhibit-24 it can not be said that the workman worked in cash and clearing department in the month of April, 2007. The witness concerned, at the instance of the workman acknowledged the extract from the payment and receiving register of Nawgaon Branch for the month of April, 2007 proved as Exhibit-24 but he could not say who had prepared the extract marked as Exhibit-24. He also said that the initial given at page-127 and 130 on the extract (Exhibit-24) are not identical with that of initial of the workman as it appears from Exhibit-K. He also admitted that as per record maintenance policy Circular No.7176 dated 24.6.2005 by the Planning and Research Development, Union Bank of India, Mumbai in

Schedule-A that the list of records to be maintained at the Branch as given in item No.51.61 and 62 relating to clearing and cheque Register, Cash Receipt Book and Cash Payment Books are to be preserved for 9 years. The management witness No.1 again stated that he did not find any information/comments of the Enquiry Officer made on the Exhibit-1 and 2 and the Disciplinary Authority also has not taken any specific notice of the said documents marked as Exhibit-1 and 2. He added that it appears from the Exhibit-J that the Appellate Authority had also not passed any remark/comment on the said document specifically. The MW.1 further mentioned that he did not think that the case of Madhav Ch. Das and Madan Ch. Das are identical to that of the workman and also he could not say exactly the difference between the cases of Madhav Ch. Das and Madan Ch. Das as well as the workman; and he did not know if any action was taken against the said Madhav Ch. Das and Madan Ch. Das both are the employees of the bank. He again admitted that in the memorandum of Settlement of disciplinary action against the workman signed between the Indian Bank Association and the workman Union at Mumbai on 10.4.2002 (Exhibit-27) at Clause-6(h) there is provision for imposing punishment of warning or censure or have an adverse remark entered against the workman if he is found guilty of misconduct and in clause-8 sub-clause-(a) an employee may be punished with warning or censure for finding the charge of minor misconduct. He also added that he had no personal knowledge about the workman for which he could not say if the workman helped the bank in many ways such as collection of any recovery loan, etc. While he admitted that in the enquiry proceeding the then Branch Manager, Nawgaon, Mr. K.C.Biswas in his reply to question No.21 stated that the workman had been very helpful for bringing bank business and in recovery of NPA accounts. However, the MW.1 categorically denied the suggestion that the enquiry was conducted with an intention to impose severe punishment against the workman, and that after disposal of the matter by the competent authority without imposing any extreme punishment, the management again initiated the enquiry proceeding against the workman with an intention to impose major punishment on the workman; and that the punishment imposed by the management on the workman is illegal, arbitrary and unjustified; and also the action of the management in dismissing his service is discriminatory and the enquiry was conducted against the principle of natural justice.

The Management witness No.2 Sri Velmuragan, the senior Manager (HR) Human Resources Department of the Union Bank of India, Regional office, Guwahati, in his deposition, stated that from the record he came to know that the workman Nazmul Karim was sub staff of their Bank who was posted in Nawgaon Branch, and a departmental enquiry was initiated before his dismissal

after giving him all reasonable opportunities to defend his case. He has proved the letter dated 26.10.2007 (marked as Exhibit-M) by which the Disciplinary Authority forwarded his findings on the enquiry and the punishment proposed to be imposed on the workman. He also said that on receipt of the report and findings together with the enquiry report dated 4.7.2007 the workman submitted his reply to the Disciplinary Authority vide his letter dated 31.10.2007 marked as Exhibit-N, and the said letter (Exhibit-N) was forwarded to the Disciplinary Authority by the Nawgaon Branch on 01.11.2007 vide Exhibit-O. In course of his cross-examination the MW.2 stated that he joined as Senior Manager, Human Resource, Union Bank of India on 27.8.2013 and he did not know the workman personally nor could he say Nazmul Karim belongs to which of the workmen's Union. He also said that he had no knowledge about the workman Madan Chandra Das and Madhav Chandra Das who were working as Clerk in their Bank. He again said that the Enquiry Officer was Amit Banerjee in respect of the enquiry against the workman Nazmul Karim and Exhibit-M(1) is not the signature of Amit Banerjee but it is the signature of the Disciplinary Authority Mr. C.R.Patra. He again mentioned the findings of the enquiry against the workman was forwarded by the disciplinary authority and not by the Enquiry Officer.

10. I have perused the entire case record along with the evidence adduced by both the sides and the argument placed by the parties. I have also gone through the written argument along with the decisions laid down in different reported cases submitted by both the parties.

The evidence on record shows that it is an admitted fact that the workman Nazmul Karim, the sub staff, Nawgaon Branch had collected an amount of Rs.30,900/- from the office of the Deputy Commissioner, Nawgaon, Bakijai Branch by putting his signature/receipt towards the recovery of Non Performing Asset loan Account but he did not deposit the said money collected from the Bakijai Office of the Deputy Commissioner Establishment, Nawgaon to the Bank; and subsequently it came to the notice that the workman collected Rs.30,900/- during the period from 27.9.02 to 13.8.03 and after persuasion of the Branch Manager, Nawgaon Branch the workman made good the misappropriated amount depositing the same on 23.9.2003 after a lapse of about one year. It is also found established that after detection of the alleged misappropriation of the amount of Rs.30,900/- by the workman the Branch Manager vide his memo dated 20.11.2003 (Exhibit-2) as per instruction from the higher authority vide letter No.NRO/CMRD/07/672/03 dated 6.11.03 marked as Exhibit-20 served the workman with a advisory memo and caution. Thereafter the Management of Union Bank of India vide their memorandum dated 12.12.2005 (Exhibit-5) issued show cause notice asking the workman to explain within 10 days on receipt of the memorandum as to under what circumstances he committed

the lapse and why disciplinary action should not be initiated against him. The Management on 12.1.2006 issued another memorandum to the workman asking his explanation vide Exhibit-C and again another reminder was issued to the workman on 7.3.2006 asking for explanation vide Exhibit-D. While the workman vide his letter dated 23.12.2005 instead of submitting his explanation asked for copy of reference letter No.NRO/CMRD/07/672/03 dated 6.11.03 (Exhibit-20) whereupon the Management again issued memorandum against the workman for submitting his explanation and the workman also submitted another letter dated 17.3.2006 requesting the Management for furnishing the copy of letter marked as Exhibit-20. Thereafter the Management framed charge vide Exhibit-9 against the workman and forwarded a copy of the same to the workman and initiated an enquiry proceeding appointing Sri Amit Banerjee, Manager (staff) Nodal Regional Officer, Kolkata as Enquiry Officer to enter into the enquiry proceeding against the workman. Accordingly the enquiry was held in presence of the Presenting Officer Mr. B.C.Jha, Manager (C), Nodal Regional Office, Ranchi appointed by the Management and the workman along with his learned defence counsel Mr. J.Chakrabarty. On completion of enquiry proceeding the Enquiry Officer submitted his report vide Exhibit-G, in which the Enquiry Officer opined that the charges framed against the workman namely gross misconduct and minor misconduct have been established and the report and findings of the Enquiry Officer was submitted to the Disciplinary Authority which after forwarding a copy of findings of the enquiry to the workman and after allowing personal hearing of the workman imposed punishment of dismissal without notice from the service of the bank for the charges concerning gross mis-conduct; and stoppage of one increment for a period of six months for the charges under minor misconduct. It is also seen that the workman has preferred an appeal before the Dy. General Manager (HRM), Human Resources Department, Union Bank of India, Industrial Relation Division, Central Office, Mumbai and the appellate authority informing the workman for personal hearing on 17.3.2008 at Central Office, Mumbai passed the order dated 7.9.2008 vide Exhibit-I after perusing the appeal along with all the connected papers and various statements made by the workman in his aforesaid appeal as well as during the course of his personal hearing, rejected the appeal preferred by the workman vide Exhibit-J.

During argument Mr. J.Chakrabarty the learned defence counsel for the workman submitted that the enquiry conducted by the Management is not proper and legal and there is violation of natural justice and the findings arrived at in the enquiry are perverse which is the result of victimization of the Management as well as unfair labour practice or malafide; and the defective enquiry stands on the same footing as no enquiry. Mr. Chakrabarty

pointed out that after coming to know about embezzlement of money the Regional Manager of the Bank asked the workman to deposit the money which the workman did and the management, looking into the extraneous circumstances and looking into the acute financial crisis of the workman and his usefulness to the Bank's business the Regional Manager did not find it proper to impose any harsh punishment and therefore imposed punishment of warning upon the workman on 20.11.2003 vide Exhibit-1 and 2 for commission of the acts which falls under both gross and minor gross misconduct in Clause-6(h) and Clause-8(a) of Memorandum of Settlement of Disciplinary Action against the Workman signed between the Indian Bank's Association and the workmen Union on 10.4.2002 (Exhibit-2). Mr. Chakrabarty added that in course of the domestic enquiry the workman informed the extenuating circumstances of financial crisis during the relevant period for which he did not deposit the money which was neither challenged nor rebutted by the management representative; and that the management witness no.1 has admitted the fact that before this Tribunal that the Management Bank has not suffered any financial loss since the amount of Rs.30,900/- collected by the workman from the Bakijai Office was deposited in the Bank lateron. It is also pointed out by Mr. Chakrabarty that after closure of the matter regarding embezzlement of money by the workman imposing punishment of caution and warning; the management with intent to victimize the workman malafide and following unfair labour practice initiated the departmental enquiry after lapse of about 2 years which was not warranted too. He further mentioned that when the workman did not deny that he had temporarily embezzled the money what else the Management wanted to prove in the enquiry since nothing further was to be proved in the enquiry; it became not only an empty one but also the malafide one which is bad in law and liable to be rejected. The learned counsel for the workman again mentioned that the management in spite of repeated persuasion by the workman did not furnish the copy of letter No.NRO/CMRD/07/672/03 dated 6.11.2003 issued by the Manager CMRD imposing punishment, and the said letter was vital and material in connection with the domestic enquiry held by the Management. He also said that the copy of the report and findings of the Enquiry Officer was not furnished, although the management witnesses in their evidences mentioned that the copy of the report and findings of the Enquiry Officer was forwarded to the workman but they have failed to produce any document by which the same was forwarded. Thus by not supplying the copy of the said letter (Exhibit-20), the report and findings of the Enquiry Officer, enquiry held by the Management is irregular, defective and in violation of natural justice. Hence, the enquiry is liable to be set aside and the punishment of dismissal of the workman from the service of the bank is also liable to be set aside.

In support of his argument Mr. Chakrabarty relied upon the case of Assam Oil Company reported in 1960 ILLJ SC, Chartered Bank's case reported in 1960 ILLJ 222 SC. He also relied upon Indian Iron and Steel Co. Ltd. Case (Supra) wherein it was held that the Tribunal is now at liberty to consider not only whether the findings of misconduct recorded by an employer is correct but also to defer from their said findings if a proper case is made out; there was once largely in the realm of the satisfaction of the employer, has ceased to be so and now it is the satisfaction of the Tribunal that finally decided the matter.

11. Mr. B. Bhattacharjee, the learned Representative of the Management, on the other hand, vehemently opposing the submission of the learned defence counsel for the workman submitted that the workman Nazmul Karim being a sub staff/Duftary, Nawgaon Branch of Union Bank of India, collected an amount of Rs.30,900/- on 10 occasions during the period 27.9.2002 to 13.8.2003 from the Bakajai Office of the Deputy Commissioner's establishment, Nawgaon which has been made clear in the enquiry report marked as Exhibit-G (page 3 and 4) and the same allegation is admitted by the workman but there is nothing to show on record that the workman at the time of deposit of the embezzlement money made an explanation that due to acute financial hardship owing to devastating flood in Nawgaon and illness of the brother of the workman he failed to deposit the amount in time. Although he made an explanation in that behalf in course of the domestic enquiry as well as in course of his deposition before this Tribunal but the latter dated 22.8.2013 issued by the Addl. D.C., relief and District Magistrate Branch, Nawgaon addressed to the Branch Manager, Nawgaon Branch of the Bank proved by the Management witness No.1 vide Exhibit-A shows that there was a mild wave of flood in Nawgaon District in the year 2002, 2003 and 2005 but the alleged occurrence of misappropriation of the bank money by the workman took place in the year 2002 and 2003. There is no supporting the evidence adduced by the workman to justify his contention that his brother was seriously ill at the relevant time. Further, the plea of the workman that due to non supply of the copy of letter marked as Exhibit-20 he was deprived of taking the defence before the enquiry proceeding is also found not sustained as the said document (Exhibit-20) has been produced by the workman before this Tribunal. Mr. Bhattacharjee further pointed out that the documents marked as Exhibit-1 and 2 and Exhibit-20 shows that as per the instruction of the higher authority the Branch Manager, Union Bank of India, Nawgaon Branch issued the memorandum cautioning and advising the workman not to do any act of misappropriation of bank's fund; and that although it is pointed out by the learned counsel for the workman that the punishment such as "caution" and "warning" were imposed upon the workman was not a casual remark rather given after proper application of mind but this memorandum of caution was

issued by the Branch Manager who is not the disciplinary authority, after holding a preliminary investigation into the matter regarding embezzlement of money amounting to Rs.30,900/- by the workman and no enquiry was held at that time.. As such, the advisory letter issuing caution by the Management does not amount to final disposal of the matter regarding misappropriation of the bank's property.

The disciplinary proceeding against the workmen are quasi judicial in nature and hence, before imposing the penalty on the delinquent workman the disciplinary authority must apply its mind to the record of proceeding including the report of the Enquiry Officer and then modulate the quantum of punishment which must be commensurate with the nature and gravity of misconduct proved against him. However, it is the established principle law of the land that in dealing with the enquiry proceeding the provision of the Evidence Act need not be followed in toto but in spirit. The Court is to look into the matter whether there is any gross irregularity and violation of natural justice done in holding the enquiry. The evidence on record shows that the report and findings of the Enquiry Officer was not forwarded to the workman but subsequently it was furnished to the workman by the disciplinary authority before hearing on the point of imposing punishment by the disciplinary authority. The Hon'ble Supreme Court in *Municipal Committee Hussiarpur—v—Punjab State Electricity Board & Ors* reported in AIR 2011 SC (Civ) 209 held that the principles of natural justice can not be applied in vacuum without reference the relevant facts and circumstances of the case, thus they can not be put in a straight jacket formula; and that the natural justice is not an unruly house, no lurking landmine nor a judicial cure, if fairness is shown by the decision maker to the man proceeded against, the form, features & fundamental of such essential processual propriety being conditioned by the facts & circumstances of each situation, no breach of natural justice can be complained.

In *A. Kanya Kumari—vs—The Project Director, Dist. Women Child Dev. Agency etc.* reported in 2014 LAB, I.C. 454 (Andhra Pradesh) it was decided that order of removal passed on the basis of admission of charges levelled against the delinquent, non furnishing of the enquiry report by the enquiry Officer to the appellant does not in any way prejudice his case. In the light of the ratio of the cases mentioned above it is revealed that the charges levelled against the workman being proved on admission, serving of enquiry report does not vitiate the enquiry proceeding & its finding. Hence, I find no force in the argument raised by the learned counsel for the workman.

On perusal of the enquiry proceeding marked as Exhibit-K & L it appears that the enquiry was conducted in presence of the workman along with his defence counsel and the management representative. Both the workman and the management representative were given sufficient

opportunity of being heard as well as to cross examine by both the parties. The workman was also found given sufficient opportunity of personal hearing before the disciplinary authority as well as the appellate authority and copies of the enquiry proceeding have been furnished to the workman by the Disciplinary Authority. Thus I find no infirmity, irregularity and violation of principle of natural justice in holding the enquiry proceeding against the workman by the management. Further the evidence adduced by both the parties before this Tribunal also clearly established the charges of doing act pre judicial to the interest of the bank involving or likely to involve the bank in monetary loss, and willful damage or attempt to cause damage to the property of the bank, which constitute gross misconduct; and the charge, Viz. breach of rules of business of the bank and instruction for running of any department which falls under minor misconduct against the workman. The entire matter would be open before the Tribunal which will have jurisdiction to satisfy itself on the facts adduced before it by the management whether the discharge or dismissal was justified; if the enquiry is defective or no enquiry has been held the entire case would be open before the Tribunal. In this connection I am inclined to rely upon *Gujrat Steel Tubes Ltd. -vs- Gujrat Steel Tubes Mazdoor Sabha* (1980) 1 LLJ 137, wherein Hon'ble Justice Krishna Iyer held "It is uncontrovertible that where no enquiry has been held by the management, entire stoppage is at large and both guilt and punishment in equal measures may be determined without inhibition of jurisdiction by the Tribunal. In such cases it is open to the Tribunal to consider the merit of the dispute and come to its own conclusion on appreciation of the evidence before it without having any regard for the view taken by the management in dismissing the workman". In *Addl. District Magistrate, Agra -vs- Prahavakar Churtavedi* and another reported in 1996 2 SCC 12 wherein it was held that when the respondent was guilty of misappropriation of such a larger amount of Rs.28,000/- and odd for couple of month it can be said that the punishment of dismissal as imposed on him was in any way un-called for or was merely disproportionate to the nature of misconduct proved against the respondent. From the above circumstances, I find no reason to interfere with the enquiry held against the workman. Thus the argument raised by Mr. J. Chakrabarty, learned defence counsel for the workman that the enquiry was defective, malafide, and against the principle of natural justice is rejected.

Mr. J. Chakrabarty, learned defence counsel for the workman has placed another argument that in the instant reference it is a case of embezzlement of money against the workman and the punishment of dismissal imposed by the management is not proper and justified rather the reference ought to be decided taking into other matter incidental to the dispute for which power has been conferred upon the Tribunal u/s 10(4) of the I.D.Act, 1947,

as the incidental matters such as the past conduct of the workman, the sincerity and honesty of the workman after issuance of the caution and advisory memo by the management, the honesty of the workman reflected from his conduct, who after finding a bag containing cash amount of Rs.47,000/- in the bank returned the same to the Branch Manager of the Bank; and also after closure of the matter by the highest officer of the Bank in the North Eastern Region after recovery of money the enquiry was initiated with vindictive attitude. He also pointed out that this Tribunal has the power to alter the punishment imposed by the Disciplinary Authority u/s 11 A of the I.D.Act. In support of his plea Mr. Chakrabarty referred the case of the workman of *M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. -vs- The Management and Ors.* reported in 1973 (1) SCC 813, wherein in para-32 of the said judgment it is mentioned:-

- (i) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power if action of the employer is not justified.
- (ii) Before imposing the punishment, the employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
- (iii) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide.
- (iv) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee too to adduce evidence contra.
- (v) The effect of an employer not holding an enquiry is that the tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or

discharge is at large before the tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

- (vi) It has never been recognized that the tribunal should straightway, without anything more, direct reinstatement of dismissed or discharged employee. Once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
- (vii) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a tribunal for the first time, punishment imposed cannot be interfered with by the tribunal except in cases where the punishment is so harsh as to suggest victimization.

Mr. Chakrabarty added that since the management witness admitted that there was no pecuniary loss suffered by the Bank and as per the terms of bipartite settlement dated 10.4.2002 between the Indian Bank Association and the Workmen Union and Ors and the Management of Indian Bank regarding disciplinary action against the workmen staff and procedure therefore. The Clause 6(h) regarding punishment to be imposed on an employee found guilty of gross misconduct which provides for warning, censor or have an adverse remark entered against him; as per clause-8(a) an employee found guilty of minor misconduct may be punished with warning or censure. On perusal of the bipartite settlement dated 10.4.2002 marked as Exhibit-27, Clause-6 & 8, it appears that an employee found guilty of gross misconduct may be dismissed without notice or be removed from service with superannuation benefit i.e. pension or provident fund and gratuity etc.; be compulsorily retired with the superannuation benefit without disqualification from future employment; be discharged from service with superannuation benefit without disqualification from future employment; be brought down to lower stage in the scale of pay up to a maximum of two stages or have his increments stopped with or without cumulative effect; or have his special pay withdrawn; or be warned or censured or have an adverse remark entered against him or be fined. As per provision of Clause-8 it appears that the workman found guilty of major misconduct may be warned or censured or have an adverse remark entered against him or have his increment stopped for a period not longer than six months.

12. From the evidence it is found that the offence of misappropriation of bank money amounting to Rs.30,900 collected by the workman from Bakajai Office, Nawgaon

during the period from 27.9.2002 to 13.8.03 but the workman did not deposit the said amount to the bank; and on constant persuasion the workman deposited the said amount on 23.9.2003 after a gap of one year and as such, the offence amounts to gross misconduct which is a serious one. It is pertinent to mention here that during the enquiry it was revealed the workman received the money in altogether 10 occasions from Bakajai office during the period of about one year and that the plea taken by him that due to damage of his property by devastating flood and his brother's serious illness he could not deposit the amount is also found to be not established. Further the employees of the bank should be trustworthy as they were the custodian of the public money and no other authority can protect the bank and as such the action of the workman is found not ignorable and excusable. In this regard I am inclined to rely upon the case of Municipal Committee, Bahadurgarh –vrs—Krishan Behari and ors. reported in 1996 2 SCC 741 wherein it was held that in case of involving corruption there can not be any other punishment than dismissal; any sympathy shown to such case is totally uncalled for and abuse to public interest; and the amount misappropriated may be small or large itself act of misappropriation is relevant.

In *Bharat Heavy Electrical Ltd.,—vs—M. Chandrasekhara Reddy* reported in 2005 LLR 258 wherein it was held that where the Labour Court held that the domestic enquiry was valid, it can not interfere with the punishment of dismissal. Further the Hon'ble Supreme Court in a catena of cases decided that unless punishment imposed by the Management upon the workman is shockingly disproportionate the Tribunal can not interfere with it.

In *Damoh Panna Sagar Rural Regional Bank & ors.—vrs—M.L.Jain* reported in 2005 (104) FLR 291 SC it was held that the Court has power to interfere with the punishment only when if it is shockingly disproportionate to shorten litigation, the Court may impose lesser punishment but where it is so shockingly disproportionate Court may direct the employer to reconsider. In *Hyderabad Plywood Industries Ltd. –vrs—Presiding Officer and another*, reported in 2004 (3) LLN 906 (AP).

Further it was held that unless punishment is shockingly disproportionate it shall not be interfered with. The allegation of victimization by the Management raised by the learned defence counsel for the workman is also found not established. Since the charge of misconduct has been clearly established against the workman and the punishment of dismissal from service without notice has been prescribed in the bipartite settlement arrived at between the Association of workmen of Indian Bank and the Management on 10.4.2002 (Exhibit-27) as discussed above there is no scope for interference of the punishment imposed against the workman. Further the quantum of punishment also can not be interfered with on the ground

of sympathy as it is well established in Maruti Uddug Ltd. —vs—Ramlal reported in 2005 LABIC 864 SC.

13. In view of my above discussion it can safely be held that the workman has failed to prove his contention that the domestic enquiry held against the workman by the management of the Union Bank of India is defective, illegal and against the principle of natural justice; and that the management with malafide initiated the enquiry proceeding after 2 years of closure of the matter; and that the enquiry held against the workman without providing him the copy of letter No.NRO/CMRD/07/672/03 (Exhibit-20) as alleged, vitiate the enquiry. Also I find no reason to interfere with the punishment imposed by the management against the workman. In the result, I find the action of the management of Union Bank of India in dismissing Sri Nazmul Karim from the service of the bank without serving notice of the Bank vide order dated 14.11.2007 and not providing him the copy of letter No.NRO/CMRD/07/672/03 dated 6.11.03 in the enquiry proceeding is legal and justified and the workman is not entitled to any relief.

14. Accordingly this reference is answered in favour of the management without granting any relief to the workman.

Given under my hand and seal of this Court on this 28th day of April, 2014, at Guwahati.

Send the Award to the Ministry as per procedure.

L. C. DEY, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 109/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/51/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/51/2007 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present:

BINAY KUMAR SINHA, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad,

Dated 28th March, 2014

Reference (CGITA) No. 109/2007

Reference Order No. L-12012/51/2007-IR(B-II)

The Zonal Manager,
Bank of India, Bhadra,
Lal Darwaja,
Ahmedabad-380001

.... (1st party)

And

Their workman
Shri Dinesh R. Vaghela ,
House No. 724/21/7,
Ramdevpura,
Jawahar chowk, Sabarmati,
Ahmedabad (Gujarat)

...(2nd party)

For the First Party : Ms. Meenaben Shah, Advocate

For the Second Party : Shri A.R. Shaikh , Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi, vide its order No.L-12012/51/2007-IR(B-II)), dated 26.10.2007 referred the dispute between the employers in relation to the management of Bank of India and their workman for adjudication to this Tribunal in respect of the matter specified in this Schedule:

SCHEDULE

“Whether the action of the management of Bank of India in termination the services of Shri Dinesh Ratilal Vaghela w.e.f. 17.10.2004 without following the provision of Section 25F and 25G of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

2. The case of the 2nd party Dinesh R. Vaghela as per statement of claim (Ext.3) is that he was working in the capacity of sweeper-cum-peon since the year 1992 in the Bank of India, Sabarmati Branch and was doing duty from 7:00 am to 10:00 pm. and was getting monthly wages of Rs. 1950 and his service was clean and blotless. He worked for 240 days in every calendar year. But he was not given Identity card, wages slip, Attendance card etc. He was signing his attendance on muster roll for whole month and then he was being paid wages by the 1st party

(Sabarmati Branch of B.O.I.) Further case is that in order to avoid to make him regular/permanent, he was illegally terminated by oral order and since then he is unemployed. The 1st party Bank has contravened the provision of section 25F of I.D. Act, by not giving one month notice or one month pay in lieu of notice nor paid retrenchment compensation, bonus and gratuity. In his place new person was engaged and he was not called back and thus 1st party also contravened the provision of section 25G of I.D. Act. His termination from service is against the principles of natural justice. On these grounds prayer is for declaring the oral termination of his service by the 1st party dated 17.10.2004 illegal and unjustified and for his reinstatement in the job with back wages also for cost of Rs. 5000/- and for any other relief to which he is found entitled.

3. As against this case of the 1st party interlia as per written statement (Ext.9) is that the bank is nationalised and public sector undertaking and for recruitment of any staff. Bank is required to observe laid down norms for recruitment. The recruitment in the vacancies of subordinate staff cadre, temporary or permanent are being done strictly from the candidates sponsored by Employment Exchange. A Panel of selected candidates as budly sepoy is prepared and maintained by the bank and they are engaged as and when necessary in leave vacancies of regular sepoy. The 2nd party D.R. Vaghela was casual labour for temporary period and for temporary increase in work of casual nature of exigencies of service. The Branch managers are not empowered to appoint any sub staff either as budlee or otherwise. Branch Manager, Sabarmati was not authorised to appoint any budlee sepoy. Shri D.R. Vaghela was not appointed as budlee sepoy, no appointment order was issued to him. He was paid through vouchers for performance of days of work. There is no employer-employee relation between the 1st and 2nd party. The 2nd party had not put in 240 days of work in any year and so, the question of following the provision of section 25 of the I.D. Act, does not arise. Denying the averment made in para 1 to 8 of the statement of claim, it has been stated that the 2nd party was not employee of Bank so no question of issue of I. Card, salary slip and attendance card and the 2nd party was never paid full salary rather he was paid through vouchers for the days he was given work. He was given temporary casual work for short time as per exigencies of the branch. His name was never sponsored by the Employment exchange. He was not regular employee of the Bank. In pursuance to the dispute raised by the 2nd party before A.L.C. (Central), the bank in its reply on 24.08.2004 interlia contended that the worker concerned Mr. Vaghela was engaged as casual worker and he never completed 240 days of work in calendar year and that he worked for 118 days in the year 1986, 48 days in the year 1988, 127 days in the year 1997 and 176 days in the year 1998. He was casual worker so no question of oral termination as alleged on 17.10.2004. The 1st party has not

contravened the provision of section 25F or 25G of the I.D. Act. On these scores prayer is that the reference is not maintainable. The workman is not entitled to any relief and the case is fit to be dismissed.

4. A per rival contention of the parties in pleading, the following issues are taken up for discussion and determination:

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2nd party worker D.R. Vaghela any valid cause of action?
- (iii) Whether the 2nd party Shri D.R. Vaghela completed 240 working days in calendar year preceding his alleged oral termination on 17.10.2004?
- (iv) Whether the 1st party has contravened the provision of section 25 F and 25 G of the Industrial Disputes Act, 1947?
- (v) Whether the 2nd party Shri Dinesh Ratilal Vaghela is entitled to the relief of reinstatement and back wages or in the alternative any lump sum compensation from the management of the 1st party?

FINDINGS

5. ISSUE NO. iii:- The 2nd party in his affidavit examination in chief (Ext.11) has stated that he was working in the 1st party Bank at Sabarmati branch as sweeper cum peon from 1992 and was performing work from 7:00am. To 10 pm. He was making attendance on muster Roll and was getting wages monthly and that he completed work for 240 days in every year and in support of this he has filed statement of work per month which are Ext. 10/3/1 to 10/3/12. From perusal of these documents, it appears that the 2nd party Mr. Vaghela has prepared self-made statement of work year wise from 1992 to 2003 but those have not been authenticated by Bank manager with seal and signature so there is no authenticity of these statement the he (2nd party) worked for more than 240 days in the year 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2000. Though the 2nd party claimed that he was removed/ terminated orally from work in Sabarmati branch on 17.10.2004. But he has not produced any self-made statement showing his days of work from January 2004 to 17.10.2004. In absence of it can be inferred that he did not work for any single day in the year 2004 and the alleged date of oral termination on 17.10.2004 is having no leg to stand and appears to be cock and bull story. There is no any self-prepared statement of the 2nd party that in the calendar year preceding his alleged oral termination on 17.10.2004 he completed 240 days of work from 18.10.2004. As per self-prepared statement, he worked for 21 days in October 2003, 05 days

in November 2003, and 08 days in December 2003, but there is no document even self-prepared statement that how many days he worked from January 2004 to 17 October 2004, prior to alleged termination days of work to be counted in the presiding year. More so, had it been a fact that he was making attendance in the muster roll likewise regular staff then why not the 2nd party demanded production of documents by the 2nd party because of the 2nd party would have insisted the 1st party to produce muster roll of 1992 to 2004 that would have falsified the claim of the 2nd party that he was making attendance in muster roll at par with regular staff. Moreover no appointment letter could have been produced by the 2nd party to substantiate claim that he was working regularly as sweeper cum peon and not as casual labour. He admitted during cross examination at page 8 that his name was not sent/sponsored by the local employment exchange and that he was not called for interview.

6. Ext. 10/1 is inter office memorandum of Bank of India, Ahmedabad (Personnel Department) to A.G.M/C.M Manager, All Branches in zone dated January sepyo/ safai Karmachari. In column No.2 casual sepyo not on approved panel who have completed 240 days in a block of 12 months/or calendar year in the year shows 2 (two). On this paper the 2nd party Dinesh R. Vaghela has put his signature in English which his signature in same strokes. Same time as on Ext. 10/1/3 to 10/1/12. That means after obtaining the zerox of Ext. 10/1 by the 2nd party unofficially he made his signature at the foot to show that this paper indicates 2 casual worker completing 240 days in calendar year and that one of them is he himself. But Ext.10/1 only show 2 number of casual worker completed 240 days in calendar year 2001. But that does not go to connect that 2nd party Mr. Vaghela was one of such casual worker vide Ext.10/2, the Zonal manager B.O.I., Ahmedabad zone vide letter dated 11.02.2002 addressed to The Manager, Sabarmati Branch, asking to know the correct position of keeping casual worker and as to any false information has been given in the 1st instance vide letter dated 15.01.2002 showing Nil return even with respect to casual worker. Curiously enough 2nd party Mr. Vaghela also signed his full signature in English at the foot of Ext. 10/2 after obtaining unofficially any how copy of this correspondence letter. So Ext. 10/1 and 10/2 do not come to the rescue of the 2nd party to substantiate any how that he completed 240 days of work in every calendar year.

7. The witness of the 1st party namely Shri Rashmikanth Parmar, retired manager of Bank of India in his oral evidence (Ext.15) has denied the statement of the 2nd party as per Ext.11 he was working daily from 7:00am. to 10:00 pm. denied that he was working as permanent employee of Bank. He deposed that whenever Dinesh was called for work his working hour was from 11:00am. to 6:00 pm. He stated that key of the Bank is kept by manager at his residence and a regular staff used to bring key from

manager's residence and in his supervision Dinesh R. Vaghela used to do casual work. He denied that the Bank's key was kept by the 2nd party vide para 3 he deposed that in Sabarmati branch there were 5-6 regular staff and Dinesh L. Sao was senior peon and that Dinesh R. Vaghela was not working either as Bank staff or Bank sub staff rather he was doing casual works and that whenever regular sub staff went on leave then 2nd party Dinesh Vaghela was called to do work for leave period and that he was not signing on muster Roll, he was paid through vouchers vide para 7 he deposed that Sabarmati branch of B.O.I. has not started in the year 1992 rather was functioning long before and that when regular safaiwala went on leave Dinesh Vaghela was doing safaiwala work and when regular peon used to go on leave Dinesh Vaghela was doing peon duty for leave period. There were two regular safai staff and 5-6 regular peon working in Sabarmati branch.

8. The 2nd party's lawyer Shri A.R. Shaikh has not submitted any case law in support of claim that even self-prepared working days statement prepared by Dinesh Vaghela having no authenticity by the concerned branch of bank should be taken into consideration that the workman completed 240 days' work in every calendar year. On the other hand, Ms. Meenaben Shah, Learned Counsel for the 1st party has relied upon case law of 2012 (5) LLN 869 (Guj)-merely because it was stated by the workman that they have completed 240 days, that alone would not be sufficient to shift burden on employer to prove contrary. Burden of proof still on employee to prove same with proper evidence. The Hon'ble Apex Court in the case law reported in 2006 SCC (L&S) 1 have held that mere affidavits or self-serving statement made by workman will not suffice., it is for workman to adduce cogent evidence, both oral and documentary. The 1st party's lawyer has also relied upon the case law of Ranjit Natwarlal Chauhan Vs. Morbi Nagarpalika [2011 (2) LPA. 1783].

9. Upon consideration of the oral and documentary evidence and also the case law cited on behalf of the 1st party. I am of the considered view and therefore find and hold that the 2nd party Shri Dinesh Ratilal Vaghela never completed 240 working days in any calendar year preceding his alleged oral termination on 17.10.2004. So this issue is decided against the 2nd party Shri Dinesh R. Vaghela.

10. ISSUE No. iv:- In view of the findings to issue no. (iii) in the foregoing paras, I further find and hold that the 1st party (management of Bank of India) has not contravened the provision of section 25F and 25G of the Industrial Disputes Act, 1947 and so the action of alleged termination on Dinesh R. Vaghela w.e.f. 17.10.2004 cannot be held illegal and unjustified because there was no question of violation of the provision of section 25F and 25G of the I.D. Act. This issue is answered in favour of the 1st party.

11. ISSUE NO. (v):- In view of the findings to issue No. iii & iv in the foregoing, I further find and hold that the 2nd party Shri Dinesh Ratilal Vaghela is not entitled to the relief of reinstatement with or without back wages and in the alternative he is also not entitled to any lump sum compensation from the 1st party. Accordingly, this issue is decided against the 2nd party.

12. ISSUE No. i& ii – In view of the findings above to issue no. iii, iv and v in the foregoing, I further find and hold that the reference is not maintainable and the 2nd party workman has no cause of action.

Accordingly the reference is dismissed. No order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 130-A/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/145/1999-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 130-A/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/145/1999 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/130-A/03

SHRI R. B. PATLE, Presiding Officer

Shri Mahesh Kumar,
S/o Shri Kantaram,
Vill Sirgora (Shivpuri),
Tahsil Parasia,
Distt. Chhindwara (MP)

...Workman

Versus

The Manager,
Union Bank of India,
Shivpuri Branch,
P O Sirgora, Tahsil Parasia,
Distt. Chhindwara

...Management

AWARD

Passed on this 21st day of April, 2014

1. As per letter dated 16-7-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/145/99-IR(B-II). The dispute under reference relates to:

“ Whether the action of the management of Union Bank of India in terminating the services of Shri Mahesh Kumar S/o Shri Kanta Ram from 12-2-92 is legal and justified? If not, to what relief the applicant is entitled to?”

2. After receiving reference, notices were issued to the parties. workman filed statement of claim at Page 2/1 to 2/5. Case of workman is that he was employed as part time sweeper in IInd party since 7-2-89 to 12-2-92. He was also doing work of clerical nature. He had submitted application for appointment. He had given consent for his appointment as part time sweeper as he was in need of job. That workman was compelled to receive amount of daily wages putting his signature on vouchers for the period 7-2-89 to 30-7-89. Thereafter he was paid monthly wages. Details of wages paid to him are given in Para-2 of the statement of claim. That he had worked more than 240 days during each of the calendar year. He acquired status of permanent employee, he is covered as employee under Section 25B of I.D. Act. He had requested Bank authorities to allow to work in his original name. After said request, workman was stopped, he was thrown out of employment from 12-2-99. Thereafter he has taken steps for raising dispute. The Central Govt. declined to refer dispute. That after writ petition filed in Hon'ble High Court, Jabalpur, the directions were given to refer the dispute.

3. Workman submits that he is covered as employee under Section 25 B of I.D. Act, his services are terminated in violation of Section 25-F of I.D. Act. He prays for his reinstatement with full back wages.

4. IInd party filed Written Statement at Page 3/1 to 3/12. IInd party raised preliminary objection that there is no employee employer relationship. The reference is not tenable. Workman is not covered under I.D. Act. IInd party is constituted under the Banking Companies Act 1970. IInd party has its own service regulations for recruitment of Class IV employees. As per the prevailing procedure in Bank, appointments of peon are made only after adopting recruitment procedure, the names sponsored by Employment Exchange. Appointments are made after

following selection process. Candidates fulfilling the requisite qualifications selected in the process are appointed. The Branch manager has no power to appoint sub staff. Name of workman was not sponsored through Employment Exchange. He was not employed on post of messenger or peon. He had not completed 240 days continuous service. Bank never appointed workman as claimed by him. Workman was engaged as casual employee as per exigencies of work. He is not covered under Section 2(oo) of I.D. Act. Workman cannot be reinstated by back door entry. It is reiterated by IInd party that workman was paid wages for working days. The details are given in Para-10 of his written statement. Workman had not completed 240 days continuous service. He is not employee under Section 25 B of I.D. Act. He had not completed 240 days continuous service preceding his discontinuation. Workman is not entitled to any relief. On such ground, IInd party prays for rejection of his claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the management of Union Bank of India in terminating the services of Shri Mahesh Kumar S/o Shri Kanta Ram from 12-2-92 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of I.D. Act. the management had denied all material allegations in his statement of claim. Workman filed affidavit of his evidence stating that he was working as part time sweeper against sanctioned vacant post from January 1989. Subhash Soni was transferred to Raipur branch. After completion of six months service, he submitted application for regular appointment on 27-9-89 to Branch Manager. His application was forwarded to Regional Office, Raipur. That he was continuously working till 12-2-92. His services were terminated. That he was not paid compensation, no pay in lieu of notice was paid to him. In his cross-examination, workman says he was paid wages Rs.7 as part time wages. After June 1989, he was working as sweeper. He denies that he had discontinued work of sweeper. He had submitted application for regularization on the post of sweeper directly to the Branch Manager. He had submitted zerox copy of his application, its original is in the Bank. Since Feb 1989 to 1992, he was paid wages under voucher. He has produced zerox copy on record. The evidence of workman that he was working from February 89 to

February 92 as sweeper in he Bank is not shattered in his cross-examination. Management's witness Tirath Prasad filed affidavit of his evidence but he failed to appear for his cross-examination. Document Exhibit W-1 clearly shows that workman was engaged as sweeper on daily wages. The information in that regard was submitted by Branch manager to regional office. Document Exhibit W-1(a) also shows that the working of Ist party workman was considered for his absorption. The Registration No. in employment exchange office is mentioned in Exhibit W-1. In Exhibit W-2 (a to d) name of workman is appearing w.r.t. wages paid in different dates. Payment vouchers is Exhibit W-3 (a to d). The amount of wages paid are shown but signatures are obtained in different names. Why such practice was followed by the Bank is not explained from evidence by management of IInd party.

7. The written notes of argument are submitted by both parties. The ratio held by their Lordship in Case of Divisional Manager, new India Assurance Co. Ltd versus A. Sankaralingam, it is held that part time workman is covered by definition of workman under Section 2(s) of I.D. Act. He is also entitled to benefit of continuous service under Section 25-F of I.D. Act. The evidence of workman corroborated by documents clearly establish that workman was working as sweeper from February 89 to Feb. 1992. He was not served with termination notice, no retrenchment compensation was paid to him. The evidence of workman on above point is not shattered. The evidence of management's witness Shri K.B. Chouke is in the nature of denial, that workman was engaged as casual employee time to time. The amount of wages paid to the workman is given in Para-7. Management's witness in his cross-examination says that permanent sweeper Subhash Soni was transferred. Workman was engaged in his place. He claims ignorance whether Subhash Soni was promoted. Workman was doing work of cleaning in the Bank. He was paid wages Rs.10-15 and not as per prescribed wages by Govt. Management's witness claims ignorance about daily wages paid to the workman. He did not remember whether workman was paid wages in name of Virendra Kumar. He also did not remember whether he had power to engage employee on daily wages. Management's witness was not posted in the bank at relevant time. From admission of management's witness, document Exhibit W-3 (a to d) are exhibited. The evidence of workman is corroborated by document whereas evidence of management's witness is not cogent, he claims ignorance about material facts asked in cross-examination. I find no reason to disbelieve evidence of workman. It is proved from evidence that workman was continuously working from 7-2-89 to 30-7-89. His services were discontinued without notice, he was not paid retrenchment compensation. As such termination of services of workman is in violation of Section 25-F of I.D. Act. Therefore I record my finding on Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 that termination of services of workman is illegal for violation of Section 25-F, question arises whether the workman is entitled for reinstatement with back wages. Workman was working for short period of about 3 years. There was not evidence that recruitment process was followed. Therefore compensation Rs. 40,000 would be appropriate. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of Union Bank of India in terminating the services of Shri Mahesh Kumar S/o Shri Kanta Ram from 12-2-92 is illegal.
- (2) Hind party is directed to pay compensation Rs. 40,000 to workman within 30 days from date of publication of award.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद के पंचाट (संदर्भ संख्या 51/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/90/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Dhanbad as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/90/2008 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947.

Ref. No. 51 of 2008

Employers in relation to the management of
UCO Bank, Bhagalpur

AND

Their workmen.

Present:

SRI RANJAN KUMAR SARAN, Presiding officer

Appearances:

For the Employers. : Sri P.K. Sinha, Manager

For the workman. : Sri N.N. Choudhary, Rep.

State :- Bihar. Industry:-Banking

Dated : 16/4/2014

AWARD

By Order No. L-12011/90/2008-IR(B-II), dated 17/10/2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“ Whether the action of the management of UCO Bank in imposing penalty of Dismissal from Bank ‘s service without notice vide order dated 26.07.2007 on Sh. Madhusudan Jha is legal and justified? What relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 03.11.2008. After notice, both parties appeared, the workman files their written statement on 09.04.2009 and the management files their written statement on 08.10.2009.

3. The short point involved in this case that the workman who is a bank employee has been dismissed by the bank management for defalcation of bank money.

4. The departmental enquiry conducted by bank held fair and proper and the said order dated 01.05.2013 has remained unchallenged. It is learnt that a C.B.I case is pending against the workman for disposal. The pending case in C.B.I. may take a very long period it is not known what will be the result of the same mere pending of the case, will not find the workman guilty.

5. But in the opinion of the Tribunal it is not proper to keep the workman under dismissal. If the workman will be given employment in the bank and kept under vigil, the money defalcated by the workman can be recovered from the salary and allowance of the workman. Hence it is proper the workman be reinstated in the job without back wages.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 28/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/45/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/45/2010 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID 28 of 2010

Reference No. L-12012/45/2010/IR(B-II)
dated 20/30.12.2010

Sh. Mahendar Lal
S/o Sh. Late Chet Ram,
R/o Village Lahog(Pohach),
P.O. Barog, Tehsil Theog,
District Shimla,
(Himachal Pradesh)-171201.

... Applicant

Versus

1. Manager Bank of India,
Bakhru Complex,
Near Deputy Commissioner's Office,
Rajgarh Road,
Solan (Himachal Pradesh).

... Respondent

Appearances:

For the Workman : None

For the Management : Sh. H.S. Sidhu proxy for
Sh. Ranjan Lohan, Advocate

AWARD

Passed on:09-01-2014

Central Govt. vide notification No.L-12012/45/2010-IR(B-II) dated 20/30.12.2010 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the action of the management of Bank of India in terminating the service of Sh. Mahender Lal w.e.f. 10.12.2009 without following the provision of Section 25F of the Industrial Disputes Act, 1947 is legal and justified? What relief the workman is entitled to and to what extent?”

2. The brief facts of the case according to the workman are that the respondent Bank opened its Branch at Solan on 01.04.2005 near Deputy Commissioner Office, and posted Shri R.K. Garg as Manager who engaged the workman as peon on 01.04.2005. The workman used to perform the duties of dusting of chair, table and counter, voucher binding arrange for water and other jobs assigned by various official of the Bank regarding giving of register/ documents, getting the register/documents signed from the manager, going to treasury and accompanying the cash Guard to State Bank of Patiala, Solan. In addition to these duties mentioned above the workman also been authorized to collect payments from the treasury. The workman worked continuously w.e.f. 01.04.2005 to 10.12.2009 as there was no other peon in the Bank. The workman used to be paid Rs.100 per day, although he used to work beyond 8 hours, but no overtime was paid. It is pleaded by the workman that his service, was terminated after a news item published that daughter of workman working in Bank of India, Solan, where it was averred that his daughter to be 20kg 80 gm in the age group of 11 months. The workman completed 240 days of continuity service in each and every calendar year from 01.04.2005 to 10.12.2009 and his services were terminated in gross-violation of Section 25F of the I.D. Act 1947. He prayed for his reinstatement along with all consequential benefits as he is unemployed after 10.12.2009. Along with the claim statement, the workman annexed demand notice filed before the ALC, rejoinder to reply filed before ALC, letters dated 26.09.2006, 15.06.2006, 11.09.2006 of the Bank of India signed by manager, Solan Branch, reply 23-02-2009 by the Bank of India to the demand notice before the Assistant Labour Commissioner.

3. In written statement, the management has taken preliminary objection that there is no employee & employer relationship between the workman and the respondent bank and he was never appointed by the Bank and no appointment letter was issued to him, he has not continuously performed his duty w.e.f. 01.04.2005 to 10.12.2009 as alleged. As he was never appointed by the bank, therefore, no question of having completed more than 240 days, payment of monthly salary and his service

having being terminated does not arise. It is pleaded by the management that workman might have informally engaged by the manager as and when necessitated on the day to day basis and has been duly compensated by the manager/officer concerned for his service and such type of informal engagement, can never be treated and equated with that of an appointment made on regular basis. The claim of the workman that he has completed 240 days in a calendar year without any cogent evidence which is wrong and baseless. The management has not violated any provisions of the I.D. Act and prayed for rejection of the claim statement.

4. Case was fixed for evidence of the workman for the last many hearings. The workman stopped attending the hearing after 27.11.2012. The workman fail to substantiate his claim that he was appointed by the management in the Bank. Workman also failed to adduce the evidence that he has completed 240 days in a year preceding to the termination.

5. The case was fixed for arguments on merits. Workman fails to appear. Arguments on behalf of proxy counsel for Shri Ranjan Lohan for management have been heard, in which learned proxy counsel submitted that the workman failed to prove his case. It is incumbent upon that workman to prove his case in which he fails. In the facts and circumstances, it cannot be held that the workman was terminated from services by the bank specially when there is no corroborating evidence to this effect on the record.

6. In view of the above it is held that the action of the management of Bank of India in terminating the service of Sh. Mahender Lal w.e.f. 10.12.2009 without following the provision of Section 25F of the Industrial Dispute Act, 1947 is legal and justified and workman is not entitled to any relief.

8. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh.
09.01.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1993.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगाओं पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 56/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-36011/05/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1993.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust, and their workmen, received by the Central Government on 04/07/2014.

[No. L-36011/05/2008 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present:

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/56 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MORMUGAO PORT TRUST

The Chairman
Mormugao Port Trust
Headland Sada
Goa-403 804.

AND

THEIR WORKMEN.

The President
Mormugao Port & Railway Workers Union
Main Administrative Office Building
Mormugao Port Trust
Headland Sada
Goa-403 804.

Appearances:

For the Employer : Mr. M. B. Anchan, Advocate

For the Workmen : Mr. G. Vijaychandran, Advocate

Mumbai, dated the 3rd February, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/5/2008-IR (B-II), dated 05.09.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mormugao Port Trust, Goa in not granting a paid holiday on 31/10/2007 on account of Election to Mormugao Lok Sabha Constituency for all the

workmen irrespective of the shift in which they are working under the People's Representation Act, 1951 is legal and justified? What relief the workmen are entitled for?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed its statement of claim at Ex-9. According to the second party the Govt. of Goa vide its notification declared the polling day dated 31/10/2007 as paid holiday being polling day for the General Legislative Assembly Election in the State of Goa. However, surprisingly the management issued arbitrary Office Order restricting the polling day holiday only limited to polling time between 7 hrs to 19 hrs. The management relied on the office memorandum issued by the Ministry of Personnel, Public Grievance & Pensions dated 26/08/1999. Therefore the workers in the second and third shift on that day were marked absent for not reporting their respective duties. The Union has raised the dispute before ALC (C) as matter could not be settled. The ALC submitted failure report to the Ministry. The Ministry therefore has sent the reference to this Tribunal. The union therefore prays that the circular issued by the management be set aside and quashed and the polling day i.e. 31/10/2007 be declared as paid holiday and the workers who were marked absent be paid their wages of 31/10/2007.

3. The first party management resisted the statement of claim of the Union vide their written statement at Ex-13. According to them the Goa Government vide its notification dated 19/10/2007 had declared holiday on 31/10/2007 being polling day for the General Elections of Goa Legislative Assembly. The said office order laid down specific guidelines for the purpose of declaring general holiday on 31/10/2007 which inter alia declared that the holiday was applicable only to those employees working for the first shift and employees scheduled to work for the second shift were to report for duty by 7.00 p.m. after exercising their franchise. No holiday was declared for employees working in the third shift. The said guidelines were based on the MO no.12/18/99-JCA dated 26/08/1999 issued by the Government of India, Ministry of Personnel, Grievance and Pensions, Department of Personnel and Training. The management denied that the office order was arbitrary. They also denied that all the workmen in second and third shift were also entitled for paid holiday on 31/10/2007. According to them their action of marking the workmen of second and third shift absent was just and proper. Therefore they pray that the reference be dismissed with cost.

4. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. no.	Issues	Findings
1.	Whether action of management in not granting paid holiday on	No.

31.10.2007 on account of election of Mormugao Lok Sabha Constituency to all workers including workers of second and third shift is legal and proper ?

- | | | |
|----|--|---------------------|
| 2. | What relief the workmen are entitled to? | As per order below. |
| 3. | What Order? | As per order below. |

REASONS

Issue No.1:-

5. In this respect it was submitted on behalf of the first party that the office order was issued on the basis of circular issued by Election Commissioner of India dated 6/4/1999. By this circular the Election Commission has clarified that a holiday may be declared only for the shift during which a poll is to be taken. Therefore they submitted that the office order was just and proper and the workmen of second and third shift cannot claim paid holiday on 31/10/2007 when poll of Bye Election to Lok Sabha in Mormugao Parliamentary Constituency had taken place.

6. As against this it was submitted on behalf of the second party that the said circular of Election Commission was challenged before Bombay High Court in Writ Petition no.283 of 1999. The said order has been placed on record at Ex-28. The Hon'ble High Court by its order dated 23/02/2004 while quashing the said circular observed that;

"In that view of the matter, we strike down para 4 of the said circular and make Rule absolute in terms of prayer clause (bb) of the petition by holding that para 4 of the circular being contrary to Section 135 B of the Representation of the People Act, 1951 is quashed and set aside."

7. Section 135 B of the aforesaid Act makes it abundantly clear that the Legislators intended the day of poll to mean full 24 hours. In the circumstances it is clear that the action and office order of the management of MPT was not just and legal by which they have not granted paid holiday on polling day i.e. on 31/10/2007 to the workmen of second and third shift and marked them absent. Accordingly, I decide this issue no.1 in the negative and hold that the workmen of second and third shift were well entitled to the paid holiday on 31/10/2007 being polling day. Accordingly, I allow the reference and proceed to pass the following order:

ORDER

- The reference is allowed with no order as to cost.
- The action of MPT Goa in not granting paid holiday on polling day i.e. 31/10/2007 to the

workers of second and third shifts is hereby declared illegal and unjust.

- (iii) The management is directed to release the pay of 31/10/2007 to the workmen of second and third shift who were absent and the workers who have attended the duty on that day be paid overtime wages for the work they have performed.

Date: 03/02/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1994.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 89/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/37/2000-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court-II, Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/37/2000 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT -II, KARKARDOOMA COURT COMPLEX, KARKARDOOMA

Present:

Shri HARBANSH KUMAR SAXENA

ID No. 89/2000

Smt. Nimo Devi

Versus

Bank of Baroda

AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/37/2000-(IR(B-II) dated

22.08.2000 referred the following Industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management of Bank of Baroda (Rampura Branch) New Delhi in terminating the service of Smt. Nimo Devi, Sweeper w.e.f 19.04.1999 is legal and just? If not then what relief the workman is entitled to and from what date?”

On 13.03.08 reference was received in this tribunal. Which was register as I.D No. 89/2000 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 25.01.2001. Wherein she stated as follows:-

1. That the workman was appointed as Sweeper in the Ashok Vihar Branch of the Bank in June 1997 and since she had been continuously working in the bank upto 19.04.99. On 19.04.99 the workman was illegally terminated by the Branch Manager of the Rampura Branch. From June 1997 to July 1998 the workman was working in Ashok Vihar Branch of the Bank. She was thereafter transferred to Rampura Branch Upto the date of illegal termination of services she was working in Rampura Branch. In gross violation of principles of natural justice and in violation of bipartite settlements the services of the workman were terminated.

2. That the workman was initially paid @ Rs. 50 as wages per day which was enhanced to Rs. 60 at Ashok Vihar Branch. However, the bank officers concerned paid wages on voucher sometimes in different name and when she came to know about this kind of unfair labour practice she protested orally. Despite such protests they continued their practice accordingly to the whims and fancies. The Branch Manager held out the threat of termination of services everytime. She was transferred to Rampura Branch in August 1998 and was paid @ Rs. 40 per day and increased to Rs. 60 only in January 1999. The transfer was effected orally by the Branch Manager. Reducing of wages to Rs. 40 is unfair labour practice. Services rendered by the workman was continuous and without any break right from june 1997 till the date of illegal termination her of services.

3. That there existed employer employee relationship between the parties herein. The work was of the management ad duties were performed in the premises of the management; work was assigned by the bank; paid wages by the bank; supervision and control were exercised by the bank; etc.

4. That the workman was/is entitled to scale wages, as per various Bi-partite settlements. She was not paid

any bonus and other legal benefits. The action of the bank in not paying the scale wages, allowances bonus and other benefits are in violation of bipartite settlements signed under the provisions of Industrial Disputes Act, 1947. Non-issuance of written order of appointment is also violative of Shastri Award and bi-partite settlements.

5. That the work performed by the workman are of permanent and perennial nature. There are number of vacancies exists in the various branches of the bank/offices. The bank of Baroda Employees Union wrote letter 1.10.1999 to the Assistant General Manager DCR I and II pointing out the details of vacancies existing in various branches. This detail was furnished in the conciliation also. In spite of these facts i.e. permanent nature of jobs and existence of vacancies the services of the workman were terminated in gross violation of Sec. 25 F, G and H. no seniority list as required in law was maintained. By continuous employment a right to remain in the employment as accrued to workman and such a right cannot be deprived off arbitrarily. The action of the management in terminating the services of the workman is arbitrary and unreasonable and discriminatory. The principles of first come last go was not followed by the bank. Subsequent termination of services of the workman fresh hands have been employed in the Bank.

6. That no notice or notice pay in lieu of notice period was given before terminating the services of the workman on 19.04.99. The bank has committed unfair labour practice by continuously extracting work and not making the payments or wages as per bipartite settlements. Even bonus has not been paid to the workman.

7. That the workman is entitled to be reinstated with all consequential benefits under law as sec. 25 f of the ID Act has been violated. The principles of natural was also not complied.

PRAYER

It is therefore prayed to the Hon'ble Tribunal that it may please to pass award holding the termination is retrenchment and in violation of Sec. 25-f of ID and the workmen is entitled to the relief of reinstatement and backwages with other consequential benefits. I may further be held that the action of the management bank is unfair labour practice and the termination is void ab initio.

Against claim statement management filed following written statement:-

1. Before adverting to and tendering parwise reply traversing Smt. Nimo Devi's submissions in the statement of claim she has filed, the opposite party begs to state that the instant order of reference is invalid and consequently this Hon'ble Court lacks the necessary jurisdiction to hold nay proceedings and make an Award in view of the following amongst other;

PRELIMINARY OBJECTIONS

1. A/ for that no 'industrial dispute: as defined under the ID Act, existed or could be lawfully assumed by the Government to be existing between the said Smt. Nimo Devi and the opposite party. It is the contention of the opposite party that not disputes or differences of all sorts but only those that are in the nature of 'industrial dispute' as defined under Act and bearing upon employer-employee relationship between an employer and a 'workman' which alone can be raised, referred and adjudicated under the Act by a labour court or a tribunal, as the case may be. The opposite party's above submissions have the sanction and support or recent authoritative pronouncements of Hon'ble Supreme Court in the cases of Nedungadi Bank (2000 II SCC 455) ; National Engg. Industries (2000 I SCC 371) and Hindustan Lever Ltd; [1984(49) FLR 364]. In the Nedungadi Bank;s case the Hon'ble Supreme Court has held that whenever a workman raises some dispute it does not become an industrial dispute and the appropriate government cannot in a mechanical fashion make the reference of alleged dispute terming it as as 'Industrial Dispute' and if it does so then the same can be challenged because an administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review. To the same effect, their Lordships have held in the National Engg; case that it is the existence of an industrial dispute which would clothe the appropriate Government with the power to make the reference and the labour court/ tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended then the appropriate Government lacks the power to make any reference and if it still makes the reference then the same can be challenged before appropriate court of law. Similarly a bench of three Learned Judges of the Hon'ble Apex Court have held in the Hindustan Lever case that Section 10(1) of the ID Act confers power on the appropriate Government to refer an existing or apprehended industrial dispute for adjudication. The disputes therefore which can be referred for adjudication , of necessary, has to be an industrial dispute which would clothe the appropriate government with the power to make the reference and the labour court/tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended, the appropriate government lacks the power to make any reference. It is thus explicit from the definition of 'industrial dispute' . 'workman' and the mandate of Sec 10 of the Act as well as from the pronouncements of the Hon'ble Supreme Court that for a dispute or difference to be in the nature of 'industrial dispute' there must have been juridical employer-employee relationship between an employer and an employee relationship must be capable of being continued by force of statutory or contractual terms of employment, express or implied. It is submitted that in the instant case the Bank never recruited and appointment

the said Smt. Nimo Devi establishing vinculum juris with her. Therefore she was not a 'workman' within the ambit and scope of Sec.2 (s) of the Act entitled to raise an industrial dispute and seek protection under the Act because in the absence of the above conditions precedent there never was any cause, occasion or reason for the bank to terminate her services. In view of the above submissions it is thus evident that the instant reference is void as it has been made by the Government arbitrarily, in violation of mandate of law and in a mechanical fashion without application of mind and consequently this Hon'ble court may not be having the requisite jurisdiction to proceed with the same and make any Award, much less in respect of the terms of reference.

1. B / for that since the order of reference is invalid incapable of being validly proceeded with therefore this Hon'ble court is a forum non juris lacking jurisdiction to hold any proceedings and make any Award with reference to that; any proceedings if held, the same would be a nullity and of no consequence.

1. C/For that it is explicit from the contents of Smt. Nimo Devi's statement of claim that even though she has not alleged that the General Manager, Bank of Baroda, Zonal Officer, New Delhi, had employed and appointed her in the services of the Bank yet, curiously enough, the Government has impleaded and arrayed him as a party to the alleged industrial dispute treating him as the employer. It is thus indisputably held out that the Government has made the instant order of reference arbitrarily in blatant violation of law without and/or in excess of authority of law; there is thus irreconcilable conflict between the said Smt. Nimo Devi's stand and the Government's assumptions.

1. D/ For that although the purported industrial dispute is an individual industrial dispute; and not a 'collective industrial dispute; referable u/s 10(1) (c) of the Act for adjudication by a labour court yet the Government has made the instant reference u/s 10(1)(d) of the Act to the Hon'ble Tribunal for adjudication assuming that more than one hundred workmen of the bank are interested and likely to be affected by the purported industrial dispute. There is thus no real exercise of reference making power by the Government.

PARAWISE REPLY TO THE SOC:

2. Contents of para 1 of the SOC under reply are utterly vague and unspecific otherwise based on gross factual and legal misconceptions and hence the same are not admitted in any particulars. Although Smt. Nimo Devi has alleged that her services were terminated by the Branch Manager of Rampura Branch of the Bank she has, however, neither given particulars of the B.M.'s orders nor has she either specified, with necessary details, the mode and manner of her recruitment or given the particulars of

the appointment order including who had appointed her in the service of the Bank- the opposite party herein as has been assumed by the Government or any other competent authority of the Bank. It is, however, stated here with pertinence while passing that all appointment and termination orders of subordinate-staff category of employees in the bank are made by the Regional Managers not by the Branch Managers who engage persons only on adhoc basis as daily wages for coping with a passing contingency in their respective branches such as a permanent incumbent has gone of leave of absence and has either got his leave extended or has otherwise not reported on duty or has remained on unauthorized absence from duties or a permanent incumbent on a post has retired and the Bank has not been able to commence or conclude the recruitment process and appointed the selectee (s) for one reason or the other like law courts' injunction order's or the regular appointee has sought extension of joining time at the place of his posting and so on. In the instant case, since Sh. Hardari Lal, a permanent sweeper in Ashok Vihar Branch, had retired and since the management was in the process of posting suitable replacement therefore the Branch Manager was constrained /compelled to engage a person on adhoc basis for purposes of dusting, sweeping and cleaning the branch premises on daily wage basis and the said Smt. Nimo Devi was readily available, the Branch Manager engaged her. There is thus no statutory or contractual protection and continuance without any let or obstruction. There is also no merit in Smt. Nimo Devi's assumption that she continuously worked in the branches in question and after working in Ashok Vihar Branch from June, 1997 to July, 1998 she was subsequently transferred in Rampura Branch and worked there till the B.M. of Rampura Branch terminated her services w.e.f 19.04.1999. From the tables given below it is indisputably held out that Smt. Nimo Devi did not continuously work in the branches in question but she was engaged therein from time to time and was paid for the days she was engaged as a daily wagger.

ASHOK VIHAR BRANCH

Month and Year	Days on which Engaged Worked	No of Days
Dec 1997	23 rd ; 24 th ; 26 th ; 27 th ; 28 th ; 30 th ; & 31 st	7
Jan 1998	1 st to 11 th ; 13 th to 18 th ; 20 th to 25 th And 27 th to 31 st	28
Feb 1998	1 st	1
May 1998	26 th to 31 st	6

RAMPURA BRANCH

• 26 th July 1998 to 6 th November 1998	84
• 10 th Dec 1998 to 15 th February 1999	54
• 1 st March 1999 to 17 th April 1999	44

From the above table it is thus evident that Smt. Nimo Devi neither worked or was engaged continuously in the branches in question as has alleged be her. In Ashok Vihar Branch she worked /was engaged only for 42 day in Rampura Branch she was engaged for 182 days. In that fact situation it is thus clear that Smt. Nimo had not earned the eligibility or the entitlement for the protection or benefit under Sec. 25-F or any other provision of the ID Act.

3. But for payments made to and received by Smt. Nimo Devi for the work done by her, rest of her averments or allegations in para 2 of her SOC are misplaced, false and hence emphatically denied. The opposite party craves to refer to and rely upon his submissions in the preceding paras.

4. Contents of para 3 as stated are based on misconception of law and hence the same are wrong and denied. It is stated that none of the parameter which Smt. Nimo Devi has suggested would imply the existence of employer-employee relationship amenable to statutory recognition and protection by the law courts for purposes of enforcement of statutory or contractual rights of the litigating parties. It is reiterated that not all sorts of relationships but only those which are founded on contractual or statutory terms that are capable of enforcement by law courts or even quasi judicial bodies.

5. In reply to para 4 it is stated that formal appointment letters and regular wage scales even under the terms of Sastri Award and Bi-partite settlements are issued to those employees who are regular appointee either on substantive basis or on tenured jobs and not to adhoc daily wagers.

6. In reply to para 5 it is stated that neither the nature of work performed by a person, nor the existence of vacancies and their number nor even the submission of application for employment against notified vacancies vest an indefeasible right in any person to claim employment in an organization. The opposite party craves to refer to an rely upon , inter alia, the Hon'ble Supreme Court's pronouncement of law in Ashwani Kumar's case (1997(2) SCC 1) with relevance. There is thus no substance or merit in Smt. Nimo Devi's submissions in para 5 of her SOC.

7. For the reason and in the facts and circumstances shown in para 2 above there is no merit in Smt. Nimo Devi's contentions in para 6 of her SOC.

8. In view of the submissions made in the foregoing paras it is thus evident that Smt. Nimo Devi's submission in para 7 of her SOC and prayer she has made to this Hon'ble court, are misconceived , misplaced and meritless and deserves outright rejection with award of costs to the opposite party.

PRAYER

In view of the foregoing premises it is now therefore most humbly prayed that this Hon'ble court may kindly be pleased;

- (i) to frame preliminary jurisdictional issue relating to the validity of the instant order of reference and this Hon'ble Court's jurisdiction to hold any proceedings and make Award and try the same first before trying the issue on merits of parties rival submissions;
- (ii) having framed and tried said preliminary issues, hold that the order of reference is invalid and this Hon'ble Tribunal lacks necessary jurisdiction to answer the terms of reference and make any Award;
- (iii) pass anyother order as the Hon'bel Tribunal may deem fit and proper to make in the facts and circumstances of the case including awarding costs of these frivolous litigation forced on the opposite party Bank.

On 27.05.2002 in reply to written statement filed rejoinder. Wherein she stated as follows:-

1. That the contents of preliminary objections in paras 1.A , 1.B, I.C and I.D are wrong and denied being misconceived. The reference is valid and legal. The workman was employed by the Bank for doing the work of the Bank as stated in the statement of claim. Therefore, the termination of the services of the workman by the Bank would amount to Industrial Disputes as contemplated in the provisions of the Industrial Disputes Act. There existed the Industrial Dispute between the parties herein. The claimant is a workman as defined in the Act as she was employed and paid by the Bank. The dispute is an Industrial Dispute and falls under Section 2A of the Industrial disputes Act and hence the Reference is valid. The management itself has admitted the employment of the workman in para 2 of the written statement and hence the pleas of the management are self contradictory. Therefore, the preliminary objections are misconceived and merit no consideration.

PARAWISE REPLY

2. Contents of paras 2, 3, 4 and 5 of the written statement are wrong and denied. Contents of corresponding paras of the statement of claim are reiterated and reaffirmed. The workman was engaged as a sweeper at Ashok Vihar branch by the Branch Manager as stated in the statement of claim. The workman was continuously in the employment from June, 1997 till her services were terminated illegally. No qualifications are required for sweeper for sweeping the premises. Hence the plea that the workman was not appointed in terms of the recruitment rules is misconceived. The continuous employment is itself

sufficient for making her permanent instead of terminating her services illegally. No other qualification is required. It is correct that the workman was employed as sweeper by the Branch Manager at Ashok Vihar branch. The rest of the allegations are wrong and denied. The workman was neither employed against any leave vacancy nor on temporary increase of work. The workman has been performing the duties of sweeper and cleaning regularly and continuously bank's branches at Ashok Vihar and upon transfer at Rampura branches as stated in the statement of claim. The management of the bank is deliberately suppressing the continuous period of employment and picked out a few days of the working of the workman. Since the workman has been continuously working in the bank for more than 240 days, she is entitled to the protection of section 25 F of the Industrial Disputes Act. Rest of the allegations are wrong and denied being factually incorrect and misconceived.

3. That the management induced new faces after terminating the services of the workman on 19.04.1999. One Smt. Kamlesh was working at Badli branch since 1980 and was transferred to Rampura branch in 1994 and from Rampura she was transferred to Ashok Vihar branch in 1998. Therefore, the workman was transferred from Ashok Vihar Branch to Rampura branch though no written transfer order was given to her. Being illiterate and poor, the Bank has exploited the workman by paying paltry sum as wages while extracting full time job and also not issued any appointment, transfer and termination letters as required under the provisions of Bipartite settlements and Awards. The action of the Bank, therefore, is unfair labour practices and more particularly denying the service benefits while extracting the regular nature of work continuously. Non-compliance of section 25 F, G and H of the Industrial Disputes Act also amounts to unfair labour practices. The principle of first come and last go was also not followed while terminating the services of the workman.

4. Contents of para 6 of the Written Statement are wrong and denied. Corresponding para 5 of the statement of claim is reiterated and reaffirmed. The continuous employment right from June, 1997 onwards is a proof of existence of vacancy of permanent nature. Sweeping job is to be continuously carried out in the branch which itself is of permanent nature. The allegations of selection procedure are wrong and denied being misconceived. The judgments cited are of no relevance to the facts of the case.

5. Contents of para 7 of the Written statement are wrong and denied. Contents of para 6 of the statement of claim are reiterated and reaffirmed.

6. Contents of para 8 of the written statement are wrong and denied. The contents of para 7 of the statement of claim are reiterated and reaffirmed.

My Ld. Predecessor proceeded on the basis of questions of determination mentioned in schedule of reference. Hence not framed any issues.

Workman in support of her case filled affidavit in her evidence. Wherein she stated as follows:-

1. That the deponent was engaged a Sweeper in the Ashok Vihar branch of the Bank in June 1997 and since then she had been continuously working in the bank upto 19-4-99. On 19.04.99 the workman was illegally terminated by the Branch Manager of the Rampura Branch. From June 1997 to July 1998 the workman was working in Ashok Vihar Branch of the bank. She was thereafter transferred to Rampura Branch. Upto the date of illegal termination of services she was working in Rampura Branch.

2. That the deponent was initially paid Rs. 50 as wages per day which was enhanced to Rs. 60 at Ashok Vihar Branch. However, the bank officers concerned paid wages on voucher sometime in different name and when she came to know about this kind of unfair labour practice she protested orally. Despite such protests they continued their practice according to the whims and fancies. The Branch Manager held out the threat of termination of services every time. She was transferred to Rampura Branch August 1998 and was paid @ Rs. 40 is unfair labour practice. Services rendered by the workman was continuous and without any break right from June 1997 till the date of illegal termination of her services. No one else was working as Sweeper to sweep the Bank premises except the claimant during the period of the employment of the claimant.

3. That there existed employer employee relationship between the parties herein. The work was of the management and duties were performed in the premises of the management; work was assigned by the bank; paid wages by the bank; supervision and control were exercised by the bank; etc.

4. That the deponent was/is entitled to scale wages as per various Bi-partite settlements. She was not paid any bonus and other legal benefits.

5. That the work performed by the deponent are of permanent and perennial nature. There are number of vacancies exists in the various branches of the bank /offices. The bank of Baroda Employees Union wrote letter 01.10.1999 to the Assistant General Manager DCR I and II pointing out the details of vacancies existing in various branches. This detail was furnished in the conciliation also.

6. That no notice or notice pay in lieu of notice period was given before terminating the services of the deponent on 19.04.99. The bank has committed unfair labour practice by continuously extraction work and not making the

payments or wages as per bipartite settlements. Even bonus has not been paid to the deponent.

7. That the deponent is entitled to be reinstated with all consequential benefits under.

8. That the documents such as letter dated 01.10.1999 of Bank of Baroda Employees union. Letter dated 1.10.99 Bank of Baroda Employee's Union, demanding the details of Vacancies of sweepers is Exhibit WW1/1; letter dated 26.03.2001 of the Bank of Baroda Employees Union to Executive Director of the bank is Exhibit WW1/2 ; Letter of 14.11.2000 of Union is Exhibit WW1/3 ; Notice dated 22.05.99 with A/D is Exhibit WW1/4.

9. That vacancy of Sweepers existed at Rampura, Ashok Vihar Branches and also in other Branches. The bank also issued Advertisement writing application for fulfilling permanent vacancies of sweeper. A copy of Advertisement issued in the Newspaper is Exhibit WW1/5.

10. That there are several vacancies in 30 braches for the post sweepers in Delhi. The bank deliberately avoiding to made any permanent appointment in all these existing vacancies. The permanent cleaning and sweeping work are get done on daily wages for the last several years and such unfair labour practice is still continuing.

11. That the contents of claim and rejoinder of the deponent are correct. I am entitled the reliefs prayed in the claim.

12. That the contents of this affidavit were read over and explained to me in Hindi and I have understood the same.

Affidavit tendered on 21.10.08. Smt. Nimo Devi was cross-examined by Ld.A/R for Management.

Her examination-in-chief and cross-examination is as follows:-

I tender in evidence my affidavit which is Ex. WW1/A. The same be read as part of my evidence.

XXXXXX By Shri. T.C. Gupta Advocate A/R for the management.

I donot Know English. It is incorrect to suggest that I did not continuously work as sweeper in the Ashok Vihar Branch of the Management Bank from June,97 to 19.4.99.It is incorrect to suggest that I was engaged not from June,97 but only from December,1997. It is wrong to suggest that in December,1997 I had worked only for 7 days starting from 23rd December, till 31st December on different dates. It is incorrect to suggest that the number of days on which I was engaged by the management bank in Ashok Vihar Branch and Ram Pura Branch are only those days which are mentioned in page 6 in Paragraph 2 of the written

statement. It is correct that I used to be paid on vouchers for the days I worked once in 15 days. I do not dispute the copy of 22 vouchers placed by the management on the record showing payment received by me. I did not make any written application to the bank for my employment there. I had been engaged by Shri Ahuja Branch Manager one Mr.Gupta whose full name I do not recollect. I was never issued any appointment letter by the management Bank. I did not received any written transfer order. It correct that I know that in case the management bank employs on regular basis whether temporary or permanent it issues an appointment letter to that employee. I do not know if daily wagers are not issued any appointment letter. Only the bank knows how they transferred their employees I do not know. It is incorrect to suggest that I have any case against the management bank and my case/claim is false and baseless. Since 19.04.1999 I am not employed anywhere. Ever since 19.04.1999 I never applied for any such job anywhere else.

Management in support of its case filed affidavit of Ms. Sammita Sachdeva on 05.03.2012. Wherein she stated as follows:-

1. I say that the instant order of reference is invalid and consequently this Hon'ble Court lacks the necessary jurisdiction to hold nay proceedings and make an Award in view of the following amongst other:

2. I say that the bank and never recruited and appointed Smt. Nimo Devi establishing vinculum juris with her. Therefore she was not a workman within the ambit and scope of Section 2(s) of the Act entitle defendant to raise and industrial dispute and seek protection under the Act because in the absence of the above conditions precedent there never was any cause , occasion or reason deter for the bank to terminate her services.

3. I say that since the order of reference is invalid incapable of being validly proceeded with therefore this Hon'ble Court is a forum non juris lacking jurisdiction to hold any proceedings and make any Award with reference to that; any proceedings if held, the same would be a nullity and of consequence.

4. I say that it is explicit from the contents of Smt. Nimo Devi's statement of Claim that even though she has not alleged that the General Manager, Bank of Baroda , zonal office, New Delhi had employed and appointed her in the service of the Bank yet, curiously enough, the Government has impleaded and arrayed him as a party to the alleged industrial disputes treating him as the employer. It is thus indisputably held out that the Government has made the instant order of reference arbitrarily in blatant violation of law without and /or in excess of authority of law; there is thus irreconcilable conflict between the said Smt. Nimo Devi's stand and the Government's assumptions.

5. I say that although the purported industrial disputes is an individual industrial dispute; and not a collective industrial dispute, referable u/s 10(1) (c) of the act for adjudication by a labour court yet the Government has made the instant reference u/s 10(1) (d) of the act to the Hon'bel Tribunal for adjudication assuming that more than one hundred workmen of the bank are interested and likely to be affected by the purported industrial dispute. There is thus no real exercise of reference making power by the Government.

6. I say that although Smt. Nimo Devi has alleged that her services were terminated by the Branch Manager of Rampura Branch of the Bank she has, however, neither given particulars of the B.M.'s order nor has she either specified with necessary details, the mode and manner of her recruitment or given the particulars of the appointment order including who had appointed her in the service of the Bank the opposite party herein as has been assumed by the Government of any other competent authority of the Bank. It is, however, state here with pertinence while passing that all appointment and termination orders of subordinate –staff category of employees in the bank are made by the regional Manager and not by the Branch Manager who engage persons only on ad hoc basis as daily wages for coping with a passing contingency in their respective branches such as a permanent incumbent has gone of leave of absence and has either got his leave extended or has otherwise not reported on duty or has remained on unauthorized absence from duties or a permanent incumbent on a post has retired and the Bank has not been able to commence or conclude the recruitment process and appointed the selected (s) for one reason of the other like law courts injunction orders or the regular appointee has sought extension of joining time at the place of his posting and so in. In the instant case, since Sh. Hardwari Lal, a permanent sweeper in Ashok Vihar Branch, had retired and since the management was in the process of posting suitable replacement therefore the Branch Manager was constrained/ compelled to engage a person on adhoc basis for purposes of dusting, sweeping and cleaning the branch premises on daily wage basis and the said Smt. Nimo Devi was readily available, the Branch Manager engaged her. There is thus no substance in Smt. Nimo Devi's assumption that she was appointed in the Bank and held appointment which was capable of statutory or contractual protection and continuance without any let or obstruction. There is also no merit in Smt. Nimo Devi assumption that she continuously worked in the branches in question and after working in Ashok Vihar Branch from June 1997 to July 1998 she was subsequently transferred in Rampura Branch and worked there till the B.M. of Rampura Branch terminate her services w.e.f 19.04.1999. From the tables given below it is indisputably held out that Smt. Nimo Devi did not continuously work in the

branches in question but she was engaged therein from time to time and was paid from the days she was engaged as daily wager:-

ASHOK VIHAR BRANCH

Month and Year	Days on which Engaged Worked	No. of Days
Dec 1997	23 rd to 31 st	7
Jan 1998	1 st to 11 th ; 13 th to 18 th ; 20 th to 25 th And 27 th to 31 st	28
Feb 1998	1 st	1
May 1998	26 th to 31 st	6

RAMPURA BRANCH

1.	26 th July 1998 to 6 th November 1998	84
2.	10 th Dec 1998 to 15 th February 1999	54
3.	1 st March 1999 to 17 th April 1999	44

From the above table it is thus evident that Smt. Nimo Devi neither worked or was engaged continuously in the branches in question as has alleged be her. In Ashok Vihar Branch she worked /was engaged only for 42 day in Rampura Branch she was engaged for 182 days. In that fact situation it is thus clear that Smt. Nimo had not earned the eligibility or the entitlement for the protection or benefit under Sec. 25-F or any other provision of the I.D. Act. The copies of 15 payment vouchers for payment of wages of Smt. Nimo Devi are exhibited as MW-1/1 to MW-1/5 paid by Rampura Branch of the respondent bank and 9 payment vouchers for payment of wages to Smt. Nimo Devi are exhibited MW-1/16 to MW-1/25 paid by Ashok Vihar Branch of the Management Bank.

7. I say that the bank had no disputes so for payments made to and received by Smt. Nimo Devi for the work done by her, rest of her averments or allegations in para 2 of her SOC are misplaced, false and hence emphatically denied.

8. I say that none of the parameter which Smt. Nimo Devi has suggested would imply the existence of employer-employee relationship amenable to statutory recognition and protection by the law courts for purposes of enforcement of statutory or contractual rights of the litigating parties. It is reiterated that not all sorts of relationships but only those which are founded on contractual or statutory terms that are capable of enforcement by law courts or even quasi judicial bodies.

9. I say that formal appointment letters and regular wage scales even under the terms of Sastri Award and Bi-partite settlements are issued to those employees who are regular appointee either on substantive basis or on tenured jobs and not to ad hoc daily wagers.

10. I say that neither the nature of work performed by a person, nor the existence of vacancies and their number nor even the submission of application for employment against notified vacancies vest an indefeasible right in any person to claim employment in an organization. I further say that there is thus no substance or merit in Smt. Nimo Devi's submission as alleged in her SOC.

11. I say that the workman is not entitled for any relief as period in her statement of claim as she was only a daily wager in the bank and was never been a regular employee and such there is no question arose for terminating her services.

Affidavit tendered on 30.10.2013. MW1 Ms. Sammita Sachdeva was cross-examined by Ld. A/R for workman.

Her examination-in-chief and cross-examination is as follows:-

I have not brought the original vouchers the period mention in my MW1/A in Para 6.

Question:- Whether in voucher in record.

Ans. : I have not brought the original voucher.

Paper shown to witness and she was questioned whether this is settlement of year but she replied that she is not aware about this documents as it does not pertain to her branch.

It is correct that settlement are binding in bank.

Every settlement is binding.

I do not know whether break has been given to the workman by the bank. It is wrong to suggest that I have the false affidavit and concealed the facts. It is also wrong to suggest that workman performed more than 240 days in a year and she was terminated illegally. It is also wrong to suggest that workman comes in category of regular workman as per settlement.

I have heard the arguments of Ld. A/R for the workman and Ld. A/R for the management and perused the pleadings of claim statement, written statement, rejoinder and evidence of parties relevant provisions of I.D. Act, 1947 and settled law of Hon'ble Supreme court on the point.

In the light of contentions and counter contentions I perused the record which shows that reference made to this tribunal having a schedule wherein question of determination No.1 is mentioned as follows:-

“Whether the action of the management of Bank of Baroda (Rampura Branch) New Delhi in termination the service of Smt. Nimo Devi, Sweeper w.e.f. 19.04.1999 is legal and just?

Which in itself indicate that burden to prove the legality and justifiability of termination of workman Smt. Nimo Devi, Sweeper w.e.f 19.04.1999 is on management Bank of Baroda (Rampura Branch).

To discharge its burden management produced MW1 Ms. Sammita Sachdeva only witness produce on behalf of Management. Who admitted settlement is binding on bank. Through her statement she tried to prove that workman only work for 221 days. In this respect management filed no record which is in their possession. So non-production of record by management shall compel to this tribunal to draw an adverse inference against management to withhold the material record which may show the actual working days of the workman. Has actual record of management on the point has been produced in its evidence then record must prove the case of workman of her continuous work for more than 240 days in calendar year. Hence in the absence of record aforesaid inference is being drawn against management U/s 114(g) of Indian Evidence Act. Moreover this fact cannot be overlooked that management through its evidence proved that workman had worked for 221 days.

In aforesaid period management has not added intervening Sundays which to be counted as per settled law. Moreover employer's failure to produce to attendance register but controvert the workman's claim as to the number of days she had actually worked will lead to an inference of the correctness of the workman's claim. This principle has been laid down by their lordship of Hon'ble Supreme Court in case of H.D. Singh Vs Reserve Bank of India (1985) 4 SCC 201 which applies with full force in the instant case.

On the basis of aforesaid discussion I am of considered view that question of determination No.1 of schedule of reference is liable to be decided in favour of workman and against management. Which is accordingly decided. Termination of workman is found illegal and unjust so she is entitled for reinstatement but she failed to plead and prove that she remained unemployed since her termination to the date of award. Hence she is not entitled for back wages.

Therefore workman is only entitled for reinstatement without back wages. Reference is accordingly decided in favour of workman and against management.

Award is accordingly passed.

Dated: 25/06/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक

ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 94/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था 1

[सं. एल-12011/53/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 1995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/53/2013 - IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE SHRI SUREUDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID 94 of 2013

Reference No. L-12011/53/2013-IR(B-II) dated 12.08.2013

Smt. Jagdish Kaur C/o
The General Secretary,
Central Bank of India,
Employees Union (N.Z.)(Regd.),
146, Golden Avenue, Phase-I,
Jalandhar (Punjab)

...Workman

Versus

1. The Zonal Manager,
Central Bank of India,
Zonal Office, Sector-17,
Chandigarh.

2. The General Secretary,
Central Bank of India,
Employees Union (N.Z.)(Regd.),
146, Golden Avenue, Phase-I,
Jalandhar (Punjab) ...Respondent

Appearances :

For the Workman : None

For the Management : Sh. N. K. Zakhmi.

Award Passed On : 20.5.2014

Government of India Ministry of Labour vide notification No. L-12011/53/2013-IR(B-II) dated 12.08.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the demand of the General Secretary, Central Bank of India Employees Union (N.Z.)(Regd.), 146, Golden Avenue, Phase-I, Jalandhar (Punjab) against the Zonal Manager, Central Bank of India, Zonal Office, Sector-17, Chandigarh for imposing of alleged illegal and severe punishment of bringing down by two stages in the scale of pay for a period of three years without cumulative effect to Smt. Jagdish Kaur, CTO, is just valid & legal? What benefit the workman is entitled for and what directions are necessary in the matter?”

2. Case called repeatedly. None appeared on behalf of the workman despite registered notice. From the several dates, none is appearing for the workman nor any claim statement has been filed. For Management Sh. N.K. Zakhmi is present. It appears that the workman is not interested to pursue with the present reference. The same is returned to the Central Govt. for want of Prosecution. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
Dated: 25/06/2014

S. P. SINGH, Presiding Officer